(21,388.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 592.

SOUTHERN PACIFIC COMPANY AND OREGON AND CALIFORNIA RAILROAD COMPANY

vs.

INTERSTATE COMMERCE COMMISSION.

CERTIFICATE OF THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

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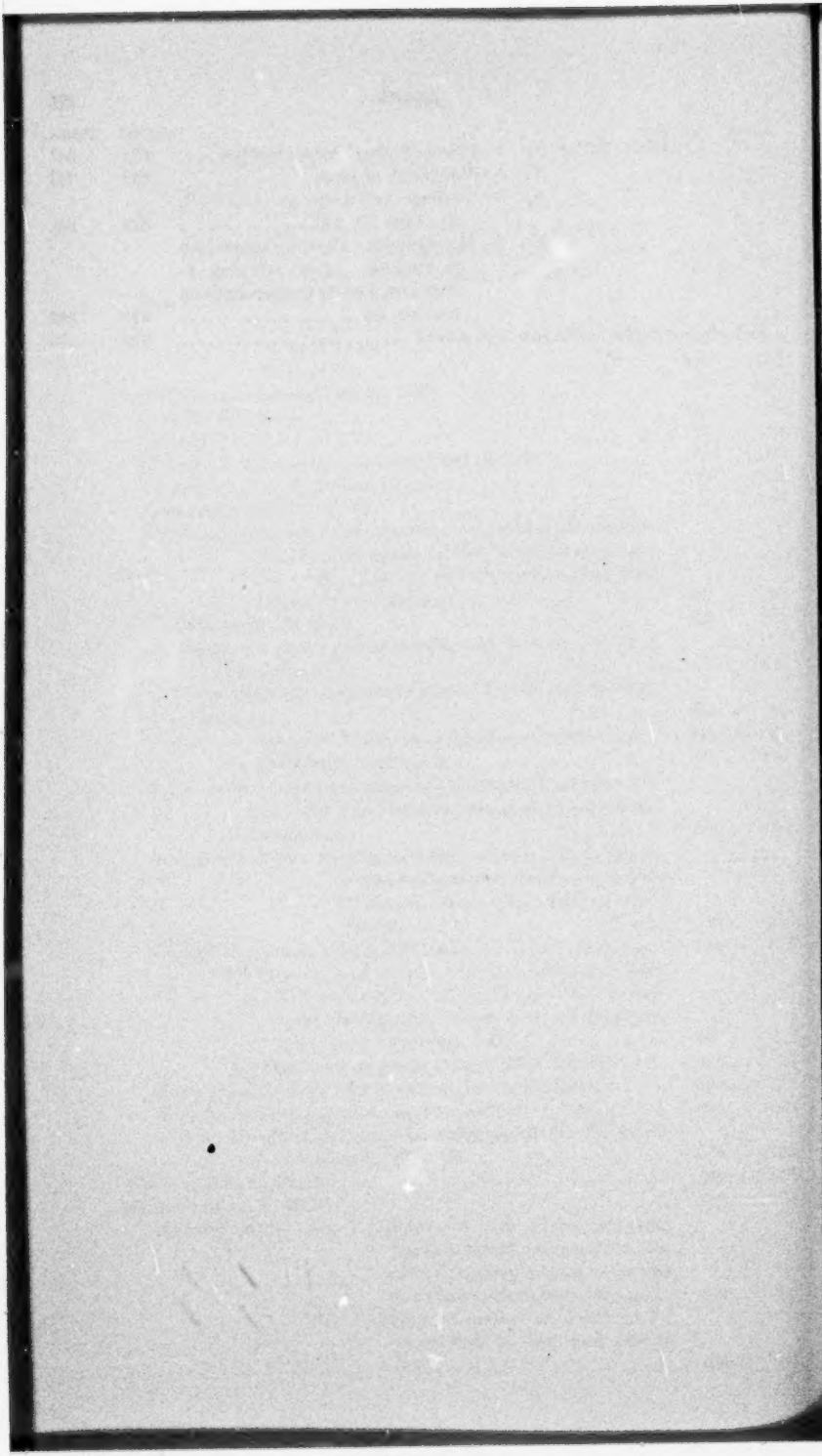

1 In the Circuit Court of the United States, of the Ninth Judicial Circuit, in and for the Northern District of California.

No. 14760.

SOUTHERN PACIFIC COMPANY, a Corporation, and OREGON & CALIFORNIA RAILROAD COMPANY, a Corporation, Complainants,
vs.
INTERSTATE COMMERCE COMMISSION, Defendant.

On the 24th day of July, 1908, the Southern Pacific Company and the Oregon & California Railroad Company filed in the Circuit Court of the United States of the Ninth Judicial Circuit, in and for the Northern District of California, their certain bill of complaint against the Interstate Commerce Commission, which bill of complaint, and Exhibit A thereto attached, are in the letters, figures and form as follows:

2 No. 14760.

In the Circuit Court of the United States, Ninth Circuit, Northern District of California. In Equity.

SOUTHERN PACIFIC COMPANY and OREGON & CALIFORNIA RAILROAD COMPANY, Complainants,
vs.
INTERSTATE COMMERCE COMMISSION, Defendant.

Bill of Complaint.

Wm. F. Herrin, P. F. Dunne, W. W. Cotton, F. C. Dillard, C. W. Durbrow, Solicitors for Complainant.
Wm. F. Herrin, of Counsel.

Filed July 24, 1908.

SOUTHARD HOFFMAN, *Clerk*,
By J. A. SCHAERTZER,
Deputy Clerk.

In the Circuit Court of the United States, Ninth Circuit, Northern District of California. In Equity.

SOUTHERN PACIFIC COMPANY and OREGON & CALIFORNIA RAILROAD COMPANY, Complainants,

vs.

INTERSTATE COMMERCE COMMISSION, Defendant.

Bill of Complaint.

To the Honorable the Judges of the Circuit Court of the United States for the Northern District of California:

Southern Pacific Company, a corporation duly incorporated under the laws of the State of Kentucky, and thereby a citizen thereof, and Oregon & California Railroad Company, a corporation duly incorporated under the laws of the State of Oregon, and thereby a citizen thereof, bring this their bill of complaint against the Interstate Commerce Commission, a body corporate duly organized and existing under and by virtue of the Act of Congress of February 4, 1887, entitled, "An Act to Regulate Commerce," and the various Acts supplementary thereto, hereinafter for the sake of convenience called "The Commission," and thereupon your orators complain and say:

I.

At the time of the entering of the order by the Commission hereinafter referred to, at the time of the filing of the complaint bringing about said order, and continuously since long prior to that time your orators have been corporations organized as aforesaid, and by virtue of their charter powers engaged in the business of operating railways in the carriage of freight and passengers between States and Territories of the United States, and more particularly between the States of Oregon and California, under joint through arrangements and tariffs of rates, fares, and charges duly established, published, and filed with said Commission under said Acts of Congress to regulate commerce, to which Acts your orators are subject in the interstate carriage of freight and passengers. Each of your orators now has, and during all said time has had, its principal operating office in the Northern District of the State of California. The Honorable Martin A. Knapp, who resides in the City of Washington, District of Columbia, is the Chairman and presiding officer of said Commission, and Edward A. Mosely, Esq., is Secretary thereof.

II.

The matter and amount involved in this suit exceeds the sum or value of two thousand dollars ($2,000.00), exclusive of interest and costs. The suit arises under the Constitution and Laws of the United States in that, as will hereinafter appear, your orators complain that certain provisions of the Act by virtue of which the Commission

fixed the rates hereinafter shown are in contravention of that Constitution, and in that your orators bring this suit under authorization of said Act to Regulate Commerce, as well as under the general equity jurisdiction of this Court.

III.

The main line of the Oregon & California Railroad extends from the California-Oregon State line through the Willamette Valley to Portland in the State of Oregon. It has sundry branch lines in said valley. The Southern Pacific Company has a line of railway extending northward from the City of San Francisco, in the State of California, connecting at the California-Oregon State line with the rails of the Oregon & California Railroad Company. On, and for a long time prior to April, 1907, your orator, Southern Pacific Company, operated as part of its system the Oregon & California Railroad, and was operating a continuous line of railway from
6 San Francisco to Portland, carrying over it freight and passengers from one State to the other under tariffs of rates, fares, and charges duly established, published, and filed with the said Commission. Prior to said April 18, 1907, your orators established a certain tariff or schedule of rates and charges known as Southern Pacific Local Tariff No. 47, I. C. C. No. 2874, which was duly published and filed with the said Commission, and which became effective on said 18th day of April, 1907. By this tariff the rate for carriage of lumber and forest products, which include rough green fir lumber and lath, between points in the Willamette Valley in the State of Oregon to various points in California, and among others to San Francisco and what are known as San Francisco Bay points, being points on the Bay of San Francisco which can be reached by carriers by vessel and likewise by your orator Southern Pacific Company, including Alameda, Oakland (Market Street), Oakland (Adams Wharf), Oakland Wharf, Oakland (Sixteenth Street), Stock Yards, West Berkeley, San Pablo, Hercules, Vallejo Junction, South Vallejo, Port Costa, Benicia, Martinez, Bay Point, Peyton, Cornwall and Antioch, was fixed at five dollars ($5.00) per ton of two thousand (2,000) pounds in carload lots. Said rate having become effective on the date aforesaid, your orators were engaged in the carriage of lumber and forest products, including rough green fir lumber and lath, at said rate, when on or about the — of November, 1907, a certain complaint was filed before the said Commission by the Western Oregon Lumber Manufacturers'
7 Association and others against your orators, complaining that said rate, as applied to rough green fir lumber and lath, was unreasonable and praying a reduction of the same. On or about the 1st day of June, 1908, the said Commission delivered its certain opinion and made its certain order, which opinion and order are herewith filed and marked Exhibit "A," and prayed to be taken as part hereof as fully as if set out at length, by which it ordered and required your orators to cease and desist on or before the 15th day of August, 1908, from charging, demanding, collecting, or receiving for the transportation of rough green fir lumber and lath in car-

load lots their rate of five dollars ($5.00) per ton of two thousand (2,000) pounds from points upon the east bank of the Willamette River in the State of Oregon and points on the west bank of said river south of Corvallis, Oregon, and points upon the west bank of said river north of said Corvallis, to San Francisco, California, and Bay points; and further ordered your orators to establish and put in force on or before the 15th day of August, 1908, and maintain in force thereafter for a period of not less than two years, and apply to the transportation of rough green fir lumber and lath in carload lots, a rate not exceeding three dollars and forty cents ($3.40) per ton of two thousand (2,000) pounds from points on the east bank of said Willamette River and points upon the west bank thereof south of said Corvallis to San Francisco, California, and Bay points, and a rate of not exceeding three dollars and sixty-five cents ($3.65) per ton of two thousand (2,000) pounds from points upon
8 the west bank of said river north of said Corvallis to San Francisco, California, and Bay points, not including in either rate the City of Portland, Oregon, as a point of origin; and further ordered and required your orators to publish and make effective said rates. Said order is in words and figures as follows, to-wit:

Order.

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 1st day of June, A. D. 1908.

Present: Martin A. Knapp, Judson C. Clements, Charles A. Prouty, Francis M. Cockrell, Franklin K. Lane, Edgar E. Clark, James S. Harlan, Commissioners.

No. 1331.

WESTERN OREGON LUMBER MANUFACTURERS' ASSOCIATION, WILLAMETTE VALLEY LUMBER COMPANY, FALLS CITY LUMBER COMPANY, CURTISS LUMBER COMPANY, CHARLES K. SPAULDING LOGGING COMPANY, BOOTH-KELLY LUMBER COMPANY, J. H. CHAMBERS, H. M. PARVIN, and CRUSAN BROTHERS, Complainants, and
INMAN-POULSON LUMBER COMPANY, OREGON & WASH-
9 INGTON LUMBER COMPANY, EAST SIDE MILL & LUMBER COMPANY, STANDARD BOX & LUMBER COMPANY, JONES LUMBER COMPANY, and ST. JOHN LUMBER COMPANY, Interveners,
vs.
SOUTHERN PACIFIC COMPANY and OREGON & CALIFORNIA RAILROAD COMPANY.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its conclusions thereon:

It is ordered, That the defendants, the Southern Pacific Company and the Oregon & California Railroad Company be and they are

hereby, notified and required to cease and desist, on or before the 15th day of August, 1908, from charging, demanding, collecting, or receiving for the transportation of rough, green fir lumber and lath, in carloads, their present rate of $5 per ton from points upon the east bank of the Willamette River, in the State of Oregon, and upon the west bank thereof south of Corvallis, Oreg., and upon the west bank of said river north of said Corvallis, to San Francisco, Cal., and bay points.

It is further ordered, That said defendants be, and they are hereby, notified and required to establish and put in force, on or before the said 15th day of August, 1908, and maintain in force thereafter during a period of not less than two years, and apply to the transportation of rough, green fir lumber and lath, in carloads, a rate not exceeding $3.40 per ton from points upon the east bank of said Willamette River and upon the west bank thereof south of said Corvallis, to San Francisco, Cal., and bay points; and a rate not exceeding $3.65 per ton from points upon the west bank of said river north of said Corvallis, to said San Francisco and bay points, not including in either rate Portland, Oreg., as a point of origin.

And it is further ordered, That said defendants be, and they are hereby, authorized to make effective upon three days' notice to the public and the Interstate Commerce Commission, given in the manner required by law, such rates as it may be necessary for said defendants, or either of them, to establish for the purpose of complying with this order. The schedules containing such rates must bear the notation that said rates are issued under the authority hereby granted, and must refer to the title and number of this case.

Said order was duly served on each of your orators by mailing a copy thereof to the president of your orators at his usual place of business, and unless the same is suspended by order of court will become effective on said 15th day of August, 1908.

IV.

Upon information and belief your orators aver and charge that in making said order and endeavoring to establish said rates, said Commission acted without warrant of law and outside of any powers rightfully held by them; that the said Act of 1887 to regulate commerce and the several Acts amendatory thereof and supplementary thereto, particularly the amendment of June 29, 1906, popularly known as the "Hepburn Bill", under which said Commission professed to act, in so far as they attempt to confer upon the Commission the power to make rates are in violation of the Constitution of the United States in that they profess to confer upon said Commission executive, legislative, and judicial powers. More specifically pleading in this behalf your orators say: All through said Acts administrative powers are conferred upon the Commission. In section fifteen (15) the Commission is authorized to act as a court, to take judicial cognizance of complaints filed for damages and after hearing to award damages, which award establishes a *prima facie* right in the complainant and is to have an effect in courts similar to the findings of a master-in-chancery, and

which no carrier against whom the award has been made can resist except by assuming the burden of proof and overflowing the *prima facie* effect of the Commission's award. The award can be resisted only under penalty of the carriers paying not only the usual costs of suit but an attorney's fee to complainant in addition if cast in the action. In said section fifteen (15) legislative powers are conferred upon the said Commission in that said Commission is authorized to determine what regulations or practices of the carrier affecting rates are unjust or unreasonable, or unduly discriminatory, or unduly prejudicial or preferential, or otherwise in violation of the provisions of the Act and to determine and prescribe what shall be a just and reasonable rate, or rates, charge, or charges, to be thereafter observed as a maximum, and what regulations and practices in respect to such transportation are just and reasonable to be thereafter followed; and to make orders under which the carrier shall abide by rules and regulations made by the Commission. All of which your orators
12 charge upon information and belief is contrary to the Constitution of the United States and especially to section one (1), article one (1) which provides that "all legislative powers herein granted shall be vested in the Congress of the United States;" and section one (1), article three (3) providing that "the judicial power shall be vested in one supreme court and such inferior courts" as the Congress may from time to time establish.

V.

More specifically pleading as to that provision of section fifteen (15) of the Act to Regulate Commerce as amended which declares that the Commission shall prescribe what shall be the reasonable rate or rates, charge or charges, to be observed as the maximum to be charged, upon information and belief your orators say, this provision is contrary to the Constitution of the United States and especially to section one (1), article one (1), above quoted, in that by that article all legislative power is confined to the Congress of the United States. The prescribing of a maximum rate which carriers may charge is a legislative function. Congress has not prescribed a maximum rate to govern in the cases provided for, but by said Act delegates this power to the Commission, and in so doing places in its hands legislative power.

VI.

Making specific reference to the opinion of the Commission herewith filed your orators aver and charge that the Commission
13 did not, and it affirmatively appears from said opinion that they did not find the rate of five dollars ($5.00) per ton to be unreasonable, but your orators aver found such rate to be reasonable in and of itself. Your orators say it further appears from the said opinion and the truth is, the Commission not only failed to find the rate of three dollars and ten cents ($3.10) or the rates established by them to be reasonable, but on the contrary specifically found the rate of three dollars and ten cents ($3.10) to be a low rate, and found the rates established by them to be, as in truth they are, substantially

the same as the rate of three dollars and ten cents ($3.10.) and thus also low rates. Yet because of matters extraneous to the question of the reasonableness of the rate, the Commission ordered your orators to desist from charging the rate of five dollars ($5) per ton, and ordered them to charge rates not exceeding the amounts fixed by them as above shown, thus fixing as maxima, rates not found by them to be reasonable, but on the contrary found to be low.

VII.

Your orators aver the Willamette Valley lies in the State of Oregon commencing at the Columbia River and extending southward a distance of about 150 miles, with the Willamette River flowing through it. Near the mouth of the Willamette River is situated the City of Portland on the waters of that river. The Willamette River flows into the Columbia River, which in turn flows into the Pacific Ocean,
and these rivers are navigable for ocean-going vessels from
14 Portland to the ocean. Between Portland and the ocean, on
the Columbia River, is Gray's Harbor. The cities of Seattle and Tacoma in the State of Washington are situated on an inlet from the Pacific Ocean navigable for ocean-going vessels. About the cities of Portland, Tacoma, and Seattle, about Gray's Harbor and other places having communication by vessel with San Francisco and bay points, are extensive lumber producing forests, and at these places in the year 1898 there were mills for the manufacture of lumber, and continuously since then the manufacture of lumber has been extensively carried on there. Between these places and the City of San Francisco and other San Francisco Bay points vessels ply carrying lumber. In the year 1898 in the Willamette Valley south of Portland there were only two or three mills for the manufacture of lumber. For such lumber as was manufactured or might be manufactured in the Willamette Valley south of Portland there then was no through rate through Portland to the territory lying east of Portland, and no rate which would permit of lumber being thus marketed. About that year certain persons desired to undertake the manufacture of lumber on a considerable scale in the Willamette Valley south of Portland and established mills at Saginaw and Coburg in that valley. They sought of the Southern Pacific Company the establishment of a low rate from these points to San Francisco, one low enough to meet water competition from the points above named from which lumber could move by ocean-going vessels to San Francisco and Bay points. In January, 1899, your orators
duly made such rate on lumber from Saginaw and Coburg,
15 and from Albany, Portland and East Portland, to San Francisco, and some other Bay points, the same being three dollars and ten cents ($3.10) per ton of two thousand (2,000) pounds. This rate was low, and recognized so to be by your orators and by all persons shipping under it, but at the time was deemed necessary to meet the water competition above shown. There was no contract or agreement that your orators would establish a rate of any specific amount, or that they would maintain any rate which they might establish for any given time, nor was there any contract by which

your orators agreed to put in any rate. It is true your orators wished to foster, protect, and increase the manufacture of lumber in the Willamette Valley south of Portland, and established the rate aforesaid to bring about this result, but under no contract or promise of maintenance of the same, as aforesaid. Subsequent to the date above named the rate of three dollars and ten cents ($3.10) to San Francisco Bay points was withdrawn at Portland and a rate of five dollars ($5) was established there, but the rate of three dollars and ten cents ($3.10) was extended to practically all points manufacturing lumber in the Willamette Valley, other than Portland, except that from points west of the river at certain places, and on the Wendling Branch, the rate was twenty-five cents ($0.25) per ton more. At the time of the existence of this rate to San Francisco Bay points your orators also had in existence a scale of rates to what is known as San Francisco Bay District, which included points nearby the Bay
16 points, and to which the rate was made by adding to the three dollars and ten cents ($3.10) to San Francisco Bay points was withdrawn *ing* points to the places of delivery until the maximum of five dollars ($5) was reached. Outside of the Bay points and Bay District points the rate from Willamette Valley points to other points in California beyond the Bay District exceeded the sum of five dollars ($5). Since 1898 many mills have been built in the Willamette Valley until there are now in that valley south of Portland about two hundred and fifty (250) mills. About January, 1904, your orators replaced the rate to San Francisco Bay points and to Bay District points by a rate of five dollars ($5) per ton of two thousand (2,000) pounds; that is to say, the rate of five dollars ($5) from Willamette Valley points took the place of the rate of three dollars and ten cents ($3.10) to Bay points, and of the rate of three dollars and ten cents ($3.10) plus the local rate to Bay District points. At the earnest solicitation of certain lumber manufacturers, your orators about May, 1904, restored the rate of three dollars and ten cents ($3.10) as applied to rough green fir lumber and lath to San Francisco and Bay points and the $3.10 scale to San Francisco Bay District points. But there was no contract to do so; and there was no contract or agreement that this rate should be maintained for any given length of time. April 18th, 1907, your orators, by their tariff above shown, withdrew the three dollars and ten cents ($3.10) rate and scale as applied to rough green fir lumber and lath, and applied to it the rate of five dollars ($5) as is above pleaded.
17 At the time the rate of three dollars and ten cents ($3.10) was established, there was as aforesaid no movement of lumber from the Willamette Valley via Portland to the East, but lumber from that valley moved southward over the lines of your orators, and such as moved East went over the lines of the Southern Pacific Company and connections to Utah, Colorado, Nevada, Arizona, and other States and Territories. During all this time lumber from Portland and other points in Oregon, and Washington, lying upon the waters navigable for ocean vessels, moved to San Francisco and Bay points. In the year 1901 Portland was opened as a gateway to the East for lumber from the Willamette Valley, and the same rate

was applied through Portland to all points east of Pocatello, Idaho, that applied to lumber originating at Portland or other points in Oregon or Washington west of the Cascade Mountains. To points west of Pocatello was applied the rate from Portland, plus the local rate from point of origin to Portland. The route from the Willamette Valley to the south passes over the Siskiyou Mountains and over a way where the grades are severe, reaching as much as 3.3%; where only small trains can be handled and the expense of operation is great. This largely induced the opening of the Portland gateway and the fixing of the rate to the East for lumber originating in the Willamette Valley. This way has much less difficult grades and is less expensive to operate. By the year 1907 about seven-twelfths (7/12) of the lumber from the Willamette Valley moved to the East via Portland, and only about five-twelfths (5/12) to
18 the South. At that time less than twenty per cent. (20%) moved into the territory affected by the rate of three dollars and ten cents ($3.10).

VIII.

Your orators aver that the facts set forth in the preceding paragraph (No. VII) appeared on the hearing before the Commission without dispute, and were found by the Commission to be true, as appears from their opinion herewith filed. As is above pleaded, the Commission did not adjudge the rate established by your orators under their tariff effective April 18, 1907, to San Francisco and Bay points to be unreasonable in itself as applied to the carriage of rough green fir lumber and lath, or greater than is warranted by the cost and value of the service rendered, but did, as aforesaid, find the rate of three dollars and ten cents ($3.10) to be a low rate. The Commission raised the rates from three dollars and ten cents ($3.10) and three dollars and thirty-five cents ($3.35) to three dollars and forty cents ($3.40) and three dollars and sixty-five ($3.65), respectively, but made this slight raise only because there had been some increase in charter rates, and held, as indeed the truth is, that the rates are substantially the same as the former rates. They held that the rates in existence prior to April 18, 1907, had been established by your orators under the circumstances shown in paragraph VII above; that on the faith of these rates the lumber industry had been developed in the Willamette Valley, and that your
19 orators were therefore estopped from making an advance in the rates as made by them, but that your orators must for the indefinite future continue the rates at substantially what they were when originally installed.

Your orators aver that the Commission exceeded in this holding any power granted them by law; that in so holding the Commission attempted not to determine the reasonableness of the rate as was their only power under the Act to regulate commerce, but to adjudicate a question of estoppel between shippers and the railways arising out of the conduct of the latter, and to establish for the future a rate less than a reasonable rate as the result of such adjudication, and attempted to require your orators to establish from points in the

Willamette Valley to San Francisco Bay points unreasonably low rates for the purpose of meeting rates made by water carriers engaged in transporting lumber from ports on the Columbia River, Gray's Harbor and on Puget Sound to such San Francisco Bay points.

IX.

Your orators aver that the rate of $3.10 was and is an unreasonably low rate, and was and is one of the lowest rates on lumber in the United States, and that the rate of $5.00 was and is in and of itself a reasonable rate for the transportation of lumber from points in the Willamette Valley to San Francisco, California, and Bay points.

20 Your orators aver that upon the hearing of the complaint before the Commission it was conceded by complainants that the rate of three dollars and ten cents ($3.10) was a low rate, one of the lowest rates on lumber in the United States. It was also conceded that the rate of five dollars ($5.00) was in and of itself a reasonable rate, and that demand would not have been made for its reduction if the lower rate had not been originally established. The evidence introduced on the trial of the cause before the Commission showed that the former rate of three dollars and ten cents ($3.10) was an exceedingly low rate; that the rate of five dollars ($5.00) is in and of itself a reasonable rate for the service performed, and nothing appeared to the contrary. Wherefore, your orators charge that upon the undisputed facts it was the duty of the Commission not to reduce the rate of five dollars ($5.00), and especially that they had no power to reduce the rate to the amounts at which they fixed them as maximum to be charged, when such amounts were conceded and shown to be unreasonably low.

Your orators will produce on the hearing hereof a full transcript of the evidence introduced on the hearing before the Commission and of the statements of counsel, and pray your Honors that the same be considered in connection with and in support of this bill.

X.

Your orators aver that in establishing, and, after it was once withdrawn, in restoring, the recognized low rate of three dollars and ten cents ($3.10) for the purpose of building up the lumber in-

21 dustry in Willamette Valley they did not directly or indirectly promise or agree that they would maintain it for any time. They in no way abandoned their discretion to increase the rate when their judgment indicated it should be increased; nor was there any promise that the rate for the future should be governed by the water rates or made with regard to them, but the doing of this was retained within the discretion of your orators.

Your orators deny that any mills were built in the expectation that the rates established, or practically the same rates, would be maintained, or in expectation that your orators would abandon their right to increase the rates as the exigencies of traffic might demand and the judgment of your orators should dictate. They deny that any one had the right to harbor any such expectation.

Your orators say that in the last several years the lumber business has greatly increased, forests of white pine have been depleted, the demand upon the yellow pine forests has been large. The result has been a great demand for lumber from the forests of the Pacific Coast, with a consequent handsome profit in the manufacture of it. Your orators aver it is because of these conditions, and because lumber manufacturers expected to reap much profit, that the lumber industry has so grown on the Pacific Coast, including the Willamette Valley.

As above appears, at the time the rate of three dollars and ten cents ($3.10) was established the only market for lumber from Willamette Valley was to the South. Since the opening of
22 the Portland gateway, as was stated by witnesses for complainant on the hearing before the Commission, and as is true, the market thus opened up to Willamette Valley mills is their most desirable and profitable market.

At the time the rate of three dollars and ten cents ($3.10) was established, lumber in the Willamette Valley was of comparatively little value. Since said time it has greatly increased in price and value until at the time of the establishment of the rate of five dollars ($5), in 1907, it was worth about double what it was worth at the time of the establishment of the rate of three dollars and ten cents ($3.10).

At the time of the establishment of the rate of three dollars and ten cents ($3.10), the low price of lumber and restricted demand for it, and the fact that the mills of the Willamette Valley could profitably seek markets only through the lines of your orators and south of Portland, the establishment of a low rate was esteemed a wise thing to do by your orators. Owing to changed conditions the continuance of that rate, or one approximately as low, is not necessary to the prosperity of the lumber industry, and would be to force your orators to carry lumber at an unreasonable and unremunerative rate.

Your orators say that when the rate of $3.10 was first established, probably the very great bulk of the lumber from the Willamette Valley went to San Francisco and Bay points, but that at the time of the establishment of the rate of five dollars ($5), as above appears, about seven-twelfths (7/12) of the lumber from Willamette Valley sought the markets of the East through the Portland
23 gateway, and less than twenty per cent. (20%) went to San Francisco and Bay points. The true amount was something over fifteen per cent. (15%).

Your orators aver that no right exists in the Commission and duty rests upon carriers to make rates so low that shippers may find a market, and they further aver that no duty rests upon them of making or continuing a rate at so low a figure that products carried by them shall find a market in the same place where they come into competition with products carried by water, but that the option is left with the carrier to meet water competition. They aver, however, upon information and belief, that shippers of rough green fir lumber and lath from the Willamette Valley can still reach the markets of San Francisco and Bay points at a profit. Your orators say, how-

ever, that even if this is not true, it is a fact that in the manufacture of lumber it is the average profit which is considered by the lumbermen. In such manufacture, some lumber is sold at large profit beyond the cost of manufacture, some at much less profit, some at no profit, and some of the lower grades are sold at less than the cost of manufacture. Your orators aver that the shippers of the Willamette Valley have no right to demand or expect of your orators that they shall make a rate of carriage so low upon their common grades of lumber that these grades can reach a market at an average distance of more than six hundred (600) miles from the point of production, and there be sold at a profit in competition with lumber moving to those points by water.

24 XI.

Your orators say that since the establishment of the rate of three dollars and ten cents ($3.10) the cost of operation of all railways, including those of your orators, has vastly increased; that labor and material have so increased in price that rates then reasonable are not so now.

Your orators say that in handling this traffic they have to transport it over a line, 250 miles of which can be operated only at great expense. The gradients and curvatures are such that only light trains can be hauled, and many engines have to be used. This line of railway passes over the Siskiyou Mountains, which rise abruptly to a height of 4124 feet. In a distance of fifteen (15) miles the road rises over a peak 2388 feet. At this point the most powerful engine of your orators, being an engine of four (4) drivers, and weighing 171.5 tons, can only handle 345 gross tons. For a distance of 47 miles an engine of that type can only handle 560 gross tons; for a distance of 49 miles only 700 gross tons; and for a distance of 107 miles only 500 gross tons; and for 36 miles only 345 gross tons. Over 203 miles of your orators' line helper engines have to be used. At some places it takes one helper engine, or two engines, to handle light trains, and for a distance of 36 miles it takes three engines to handle the trains. All of which entail a very heavy expense of operation. Your orators' line is so situated that it is subject to
25 frequent washouts, making the track difficult to keep in condition for operation and causing heavy expense for repair.

The lumber moving from Willamette Valley is gathered largely from branch lines maintained almost solely for lumber and operated at heavy expense. Freight moves in much greater quantities from the Willamette Valley to the South than from the South into the valley. This brings about a large movement of empty cars to the North for the hauling southward of lumber from the valley.

Your orators aver that for some time before it was changed, the rate of three dollars and ten cents ($3.10) was not a remunerative rate. They aver and charge that the rates established by the Commission will prove unremunerative.

Your orators say that by reason of the conformation of the Willamette Valley, and by reason of water competition made by the Williamette and Columbia Rivers and the ocean, traffic conditions

in the valley are unusual and demand the judgment and discretion of experienced traffic men constantly in touch with those conditions. From their experience with those conditions, and satisfied that the rate of five dollars ($5) is just and reasonable to shippers, they established the same. They aver that said rate is reasonable and say that the establishment of any rate less than this would be unreasonable.

Upon the hearing hereof your orators will produce sundry affidavits which they pray may be considered in connection with and in support of this bill.

26 XII.

Your orators say if the rates established by the Commission are permitted to go into effect and shall ultimately be held to be unreasonable, your orators will suffer irreparable injury; that judging from the past, your orators believe the movement of cars per year from Willamette Valley mills to San Francisco and Bay points will be about one thousand (1,000); that the average loading of said cars is about twenty-nine (29) tons; of said cars eight hundred (800) would move under the three dollars and forty cents ($3.40) rate, and two hundred (200) under the rate of three dollars and sixty-five cents ($3.65), so that if the rates established by the Commission are permitted to go into effect, but ultimately held to be bad, your orators will lose the amount above indicated; that until the establishment of a new rate your orators will be forced to carry lumber at said unreasonable rate, thus suffering irreparable injury in the reduction of their just revenues.

Your orators say that since the 18th day of April, 1907, they have been carrying lumber to San Francisco and Bay points at the rate of five dollars ($5) per ton. If the rates established by the Commission are permitted to go into effect there will be a multiplicity of claims for reparation and suits against your orators, against which they would have no adequate protection. Your orators say they are without any adequate remedy, except as your Honors may grant to them a writ of injunction as herein prayed for.

27 XIII.

To the end that your orators may obtain the relief to which they are entitled in the premises they now pray:

First. That upon the filing of this bill your Honors will grant all such temporary and interlocutory restraining orders suspending the enforcement of the order of the Commission as may be necessary pending the further hearing of the matters of this bill.

Second. That this bill be set down for further hearing on a day certain to be named by your Honors and that said Commission be given notice thereof and called upon to show cause why there should not be granted a preliminary injunction suspending their said order, and enjoining them, their officers, agents, servants, and representatives from enforcing the same, or instituting any suits or taking any proceedings to enforce the same until final determination of this

case; and that upon such day so fixed by your Honors, or as speedily thereafter as practicable, your Honors grant a preliminary injunction so suspending such order and so enjoining said Commission, its officers, agents, servants, and representatives.

Third. That upon final hearing said preliminary writ of injunction be made perpetual and that it be decreed that said order of said Commission shall be forever set aside, annulled, and held for naught, and that said Commission, its officers, agents, servants, and representatives, be forever enjoined from enforcing or taking any steps to enforce the same.

28 Fourth. That there be granted to your orators process of subpœna to said defendant, The Interstate Commerce Commission, requiring them to duly appear and answer (but not under oath, the same being expressly waived) the several allegations of this bill.

Fifth. Your orators further pray for such other general and special relief as in equity and good conscience is meet and proper.

SOUTHERN PACIFIC COMPANY,
OREGON & CALIFORNIA RAILROAD COMPANY,
By C. H. REDINGTON, *Assistant Treasurer,*
WM. F. HERRIN,
P. F. DUNNE,
W. W. COTTON,
F. C. DILLARD,
C. W. DURBROW,
Solicitors for Complainant.

WM. F. HERRIN,
Of Counsel.

29 COUNTY OF SAN FRANCISCO,
State of California, ss:

I, C. H. Redington, being duly sworn, say that I am Assistant Treasurer of the Southern Pacific Company and of the Oregon & California Railroad Company, and that I sign the corporate name of complainants to the foregoing bill and attach the corporate seal. I further say that I have read the foregoing bill of complaint and that the allegations therein contained are true, except where made upon information and belief, and where so made I believe them to be true.

[SEAL.] C. H. REDINGTON.

Sworn and subscribed to before me, E. B. Ryan, a notary public in and for the County of San Francisco, in the State of California, this 24th day of July, 1908.

[NOTARY'S SEAL.] E. B. RYAN,
Notary Public in and for the City and County of San Francisco, State of California.

30 Before the Interstate Commerce Commission.

No. 1331.

WESTERN OREGON LUMBER MANUFACTURERS' ASSOCIATION ET AL.
v.
SOUTHERN PACIFIC COMPANY ET AL.

Submitted March 6, 1908. Decided June 1, 1908.

Teal & Minor for complainants.
W. H. Abel for interveners.
W. F. Herrin, P. F. Dunne, W. W. Cotton, and *F. C. Dillard* for defendants.

Report and Order of the Commission.

31 No. 1331.

WESTERN OREGON LUMBER MANUFACTURERS' ASSOCIATION ET AL.
v.
SOUTHERN PACIFIC COMPANY ET AL.

Submitted March 6, 1908, Decided June 1, 1908.

1. Where a rate has been established and maintained for a considerable period for the purpose of developing a particular industry and with full knowledge that the industry could not be developed without it, and where, under the influence of such rate, large amounts of money have been invested in property the value of which must be seriously impaired by an advance of the rate, that fact is an important consideration in passing upon the reasonablenes of such advance.
2. The Southern Pacific Company established a rate of $3.10 per ton upon rough green fir lumber and lath from points in the Willamette Valley to San Francisco for the purpose of developing the lumber industry in that section, and maintained the rate in effect, with a brief interval, for six years; and on the strength of this rate that industry attained considerable proportions. In April, 1907, this rate was advanced to $5 per ton; *Held,* That the advance was unreasonable and that the rate ought not for the future to exceed $3.40 per ton.

Teal & Minor for complainants.
W. H. Abel for interveners.
W. F. Herrin, P. F. Dunne, W. W. Cotton, and *F. C. Dillard* for defendants.

Report of the Commission.

PROUTY, *Commissioner:*

On April 18, 1907, the Southern Pacific Company advanced the rate on rough green fir lumber and lath from certain points in the Willamette Valley to San Francisco, from $3.10 to $5 per ton, and

the lawfulness of that advance is before us in this proceeding. The rate of $3.10 applied from all mills upon the east bank of the Willamette River and from mills south of Corvallis, upon the west bank of that river. From mills north of Corvallis, upon the west bank, an additional charge of 25 cents per ton was imposed. The rate did not apply from Portland itself.

The new rate of $5 per ton, established April 18, applies to all mills in the Willamette Valley upon both sides of the river, including Portland. The complainants ask to have the $3.10 rate
32 restored at those points to which it formerly applied, on the east of the river, and also that it be extended to mills upon the west of the river. Certain lumber manufacturers whose mills are located at Portland have intervened with the prayer that the $3.10 rate be accorded to mills at Portland. Three questions are therefore presented by the record.

First. Shall the $3.10 rate be restored to those points to which it formerly applied?

Second. Shall it be extended to mills upon the west bank of the Willamette River?

Third. Shall mills at Portland be given the benefit of this rate?

To an understanding of the questions presented a brief reference to the development of the lumber industry in the Willamette Valley seems necessary.

Previous to 1898 no lumber was cut in that valley except such as was necessary to supply the local consumption. The ocean could only be reached at Portland upon the north after a rail haul of considerable length and upon a comparatively high rate, so that lumber cut in the Willamette Valley could not find a market by water in competition with that produced in Portland. The rate to the south was so high as to prohibit shipments in that direction in competition with water carriage from Portland. About 1898 the Southern Pacific Company became convinced that it ought to adopt a policy which would develop the lumber industry along its lines in the Willamette Valley. At that time it had no affiliation with the Union Pacific Railroad or its allied lines and therefore could obtain no outlet for this lumber through the Portland gateway. Since both the Oregon Railroad & Navigation Company and the Northern Pacific Company had extensive lumber interests of their own which they were bound to protect, the only possible market was to the south and to points in the east reached via the south.

For several years rates had been in effect from Puget Sound territory and from Portland to Utah, Colorado, and other eastern destinations. In order that lumber produced in the Willamette Valley might be given a market in competition with Washington and Portland mills in this territory it must go south to Sacramento and east over the lines of the Southern Pacific. There was also an extensive market in San Francisco and adjacent territory. This market could be reached from Portland and from points upon Puget Sound by water, and lumber arriving at San Francisco by water could there be loaded upon the cars and shipped by rail both to nearby interior points and to the eastern points above mentioned. In order, therefore, to give

this lumber of the Willamette Valley a market it was absolutely essential to establish a rate from that territory to San Francisco which was fairly equivalent to the water rate from Portland
33 and from corresponding points. This was perfectly understood by all parties and the determination of the Southern Pacific was to do precisely this thing.

What actually occurred in that valley can be best shown by considering the history of the operations of the Booth-Kelly Company, which was the first operator in the field and which is to-day the largest producer of lumber in that region. In 1897 Mr. Booth was running a mill in the southern part of Oregon for the cutting of pine, which is used mainly for sash and doors and cabinet purposes. An opportunity presented itself to lease a mill which had just been constructed for the manufacture of fir, and the Southern Pacific Company applied to him stating that a determination had been reached to make this lower rate and asking him to lease this mill. At that time the merchantability of Oregon fir in competition with Puget Sound fir and other lumber had not been demonstrated, but Mr. Booth, believing that the experiment was worth trying, leased this mill for a year and the railroad company put in a rate of $3.10 per ton.

An actual test showed Mr. Booth that this lumber would sell in competition with other fir in the San Francisco market and also convinced him that he could profitably manufacture upon the rate proposed. He therefore entered into negotiations with the Southern Pacific Company for the purchase of a tract of timber land embracing about 17,000 acres. In order to reach this land it was necessary to construct a railroad some 20 miles in length, which the Southern Pacific undertook to do upon condition that Mr. Booth should ship over the road for the first year a certain number of carloads of lumber, that he should pay an arbitrary rate of so much per ton over this branch road, and that he should take off the lumber from the tract in question within a given time.

Mr. Booth testified—and there can be no doubt of the fact—that previous to the making of this contract and as the basis of all his operations it was understood between him and the railroad company that a rate to San Francisco should be put in and maintained which was fairly equivalent to the water rate from Portland and that he should also be given a rate via Sacramento to various eastern points in Idaho, Utah, and Colorado. In accordance with this understanding the Southern Pacific established in 1899 a rate of $3.10 per ton upon lumber to San Francisco and bay points. This original rate applied to all kinds of lumber both green and dry. At first it was only applicable to the section in which the Booth mills were located, but was very soon extended to the entire Willamette Valley, including Portland.

Under the stimulus of this rate the lumber business in the Willamette Valley rapidly developed. The Booth-Kelly Company
34 extended its own operations, and many other mills sprang up, until, in 1904, that industry had reached very considerable proportions.

In the latter part of 1903 the $3.10 rate was withdrawn from Portland, and in January, 1904, it was withdrawn from the entire Willamette Valley, a rate of $5 being established instead. The testimony in this case shows that the effect of the putting in of the $5 rate was, or would have been if continued, to practically suspend the operations of these mills. They made this representation with great earnestness to the Southern Pacific Company, and finally the leading officials of that company, among others its chief traffic director, visited the scene of these operations. As a result of this personal inspection and after further consideration that company announced that while the rate never ought to have been made at the outset, inasmuch as it had been, that company would continue it for the future, but would limit it to rough lumber shipped green. Acting upon this announcement, the Southern Pacific Company did, in May, 1904, make effective once again this rate of $3.10, which was now, however, applied not to all lumber, but only to rough green fir lumber and lath.

As showing the importance which lumber manufacturers in this region attached to the $3.10 rate, what occurred at the time this rate was withdrawn in 1904 in a particular instance may be mentioned. A certain operator who owned one mill already had arranged, in the year 1903, to purchase a considerable quantity of timber and to erect a large mill. When rumors of the withdrawal of the $3.10 rate became rife he suspended his negotiations, but after the rate was reestablished in 1904, believing from what the officials of the Southern Pacific had said to him that this company had now finally determined upon the maintenance of this rate as a permanent policy, he purchased his land and resumed the building of his mill, and has since constructed still another mill and purchased some 800,000,000 feet of timber.

There can be no question but what the existence of this industry in anything like its present proportions in the Willamette Valley is almost entirely due to the establishment of this $3.10 rate. Without it the mills would not have been built nor the timber which these operators own purchased, nor could the business have been profitably conducted during recent years upon the present rate of $5 per ton. The complainants insist that a maintenance of the present rate will shut up their mills and very largely depreciate their timber investments.

There are some 250 mills in the Willamette Valley, not including Portland, with a capacity of perhaps 1,300,000,000 feet per annum, although the actual cut of these mills has never exceeded in any one year 1,000,000,000 feet, of which about two thirds is shipped
35 out by rail over the lines of the defendants, the balance being consumed locally. A considerable part of this so-called local consumption is purchased by the railroad itself for its own use. The Booth-Kelly Company manufactures nearly one-seventh of the entire output of the valley and there are two or three other large operators, but the great majority of these mills are small with a capacity of from 10,000 to 20,000 feet in ten hours.

Green fir lumber weighs about 3,300 pounds to the 1,000 feet, and therefore an advance of $1.90 per ton would be equivalent to

$3.13½ per 1,000 feet. The profit in manufacturing lumber in the Willamette Valley during the last seven or eight years has probably ranged from $1.50 to $2.50 per 1,000. These profits have often been greater and often less, but the above are perhaps the fair average limits. Most operators in this section own their own timber, but stumpage is frequently bought, and has ranged from 25 cents to $1 per 1,000. In arriving at the above profit stumpage is always charged as a cost of production. The Booth-Kelly Company charges itself for stumpage 50 cents per 1,000, although under the price at which that company bought its land the actual cost would be somewhat less. If the cost of stumpage should be eliminated the profits would be increased by 50 cents per 1,000 feet. It will be seen, therefore, that this advance in the freight rate exceeds by considerable the average profit of manufacture in the Willamette Valley plus the price of stumpage.

This lumber competes with that produced at Portland and shipped from Portland by water to San Francisco. It was not denied that in the past Portland lumber had successfully met lumber from the Willamette Valley in San Francisco upon the former rates of transportation. The rate from the Willamette Valley is now increased by more than the profit in the manufacture of this lumber. There can be but one result—lumber reaching San Francisco by water must supplant that from the Willamette Valley in the San Francisco market.

The rate of $3.10 was intended to meet the water rate from Portland and applied only at San Francisco and other bay points which could be reached by water. Lumber from Portland to an interior destination must be loaded upon the cars at the water line and transported by rail to the interior point. Lumber from the Willamette Valley to the same interior point was charged the $3.10 rate to San Francisco plus the local rail rate from San Francisco to destination, thus maintaining the competitive equality between Portland and the Willamette. It will be seen, therefore, that the $3.10 rate gradually increased as the distance from San Francisco Bay increased, until the $5 limit was reached. The present rate of $5 applies to all the territory which could formerly be reached at $5 and less.
36 Hence the advance to points distant from San Francisco Bay is less than $1.90 per ton by a gradually diminishing amount until it reaches the old $5 limit.

It will also be remembered that the Willamette Valley now has an outlet to eastern destinations via Portland. When this original rate was established there could be no movement through the Portland gateway and a rate was made to eastern destinations via Sacramento. The movement to the south over the Siskiyou and afterwards to the east over the Sierra Nevada was extremely expensive, and when the Southern Pacific and the Union Pacific became united in 1901 joint rates were established for the movement of this lumber through Portland over the Union Pacific lines, where the grades were much easier and the cost of operation much less. These mills therefore reach today via Portland the same eastern destinations which they formerly reached via Sacramento. These rates from the Willamette Valley

to various eastern points are the same as from Portland, as a rule, and usually the same as from mills in Washington upon the west of the Cascades. Those rates have also been advanced and proceedings are pending before the Commission for a restoration of the original rates, but the questions involved are entirely distinct from this. The defendant apparently concedes that whatever rate is established to eastern points from Portland should also be conceded these Willamette Valley mills.

It follows, therefore, that the effect of this advance is to shut up, as to the Willamette Valley, the San Francisco market, and to limit the market in the vicinity of San Francisco. All other markets are open to these mills to exactly the same degree that they have been in the past. What, then, is the effect of withdrawing that particular market?

The timber cut at these Willamette mills is known as Oregon fir and is very similar to Washington fir except that the trees are smaller. The testimony fairly shows that grade for grade the lumber sells at the same price with Washington fir and with the same readiness. It would seem, however, that the percentage of high-grade lumber runs somewhat less with these mills than in Washington and, still further, that the poorer grades are not as good here as in Washington.

The testimony showed that this poorer lumber could not be shipped to eastern markets and that the only market in which it could be disposed of was San Francisco and points in that immediate vicinity, and this seems probable, for there are few eastern points which can be reached at less than a 40-cent rate, and it fairly appears in this case that there are to-day few if any markets to which No. 2 lumber can be shipped upon a rate as high as that. As was very truly said
by counsel for the defense in the argument of the Eastern
37 Rate cases, the common board is everywhere, and the Pacific coast manufacturer can not expect to send to the east this grade of his product. These lower grades must be disposed of in comparatively nearby markets. Mills upon the coast can market this lumber by water; interior mills in Washington seem to find a considerable local market, and the same is true of Portland, but these operations in the Willamette Valley have no local market of any account and have relied in the past upon the San Francisco market for the disposing of this part of their output. To deprive them of this market or to require them to take $3.13 per 1,000 feet less for this part of their product, which is considerable percentage of the whole, would turn a profitable into an unprofitable business.

It appears probable, too, that the effect of withdrawing this market will be more serious upon the small mill than upon the two or three large operators who are affected by these rates. In order to ship lumber long distances it must frequently be dressed and kiln-dried. The larger mills have facilities for doing this, but the smaller operations are without such facilities; nor can they afford to provide them. They must sell their lumber in the rough and they do sell a very considerable portion of it in this market.

It appeared from figures furnished by the defendants that during the year 1907, 7,108 cars of lumber moved from the Willamette

Valley via Portland and that 5,436 cars of commercial lumber moved south through Ashland. There was a further movement through Ashland of 3,326 cars of company lumber. The relative movement south was much less during this year than at any previous period, for the reason that the defendants were unable to furnish cars for the transportation of lumber in that direction. Of the cars moving south about one-half were to San Francisco and other bay points and a large proportion of the remainder were to points affected by the advance; although it should be remembered that a portion of this southern movement was dry lumber to which the $5 rate only applied. Mr. Booth testified that about 20 per cent. of this lumber moved south under the $3.10 rate and that the permanent withdrawal of this rate would practically shut down the operations of his company.

We can hardly agree to the claim of the complainants that a maintenance of the advanced rate would generally and permanently close these mills in the Willamette Valley. It would, in our opinion, very greatly diminish the profits otherwise obtainable from a prosecution of that business. It would limit the operations of these larger companies and would probably drive out of business for the time being many of the smaller ones. This locality is not to-day dependent upon the San Francisco market to the same extent that it was
38 in 1898, for other markets have been developed; but that is still the only available market for any considerable quantity of the lower grades of lumber and without a market for those grades the business in this valley can not be successfully prosecuted. In time, as cost of stumpage to the Portland mill and the Puget Sound mill advances the manufacturer in the Willamette Valley will derive from the lower price of his logs an advantage which will enable him to compete in these markets upon the higher rate, but some years must elapse before that condition will be reached. Meanwhile the operator who has invested his money must suffer.

For the last ten years lumber operations upon the Pacific coast have been wonderfully profitable, and these extraordinary profits have led to an abnormal development of the business. What is true of the whole coast is true of the Willamette Valley, but in a somewhat less degree. The timber here is smaller, the expense of getting it to the mill somewhat more, the cost of manufacturing it at the mill somewhat greater, the quality of the lumber itself when manufactured somewhat poorer, or, rather, the percentage of lower grade lumber somewhat higher, all of which has put the operator in this section at a disadvantage over his competitor at Portland and in Washington. To withdraw this rate adds to that disadvantage.

The distance from Portland to San Francisco is about 750 miles. This rate of $3.10 applied from mills just south of Portland as a blanket rate over about 250 miles up the Willamette Valley, the average distance over which lumber moved upon it being perhaps 625 miles. Upon this assumption the rate would yield about 5 mills per ton-mile.

All this lumber in reaching San Francisco must be hauled over the Siskiyou Mountains, where grades are extremely heavy and the cost

of operation unusually high. Taking the whole 750 miles the grade does not exceed one-half of 1 per cent. for 500 miles, and operating conditions over this portion of the line are favorable; but for about 250 miles grades and curvatures are severe. The steepest grade is found just after leaving Ashland for the south, where for 36 miles the heaviest engine can only haul 375 gross tons. Over the entire 250 miles 500 tons would be an average load for such a locomotive.

In practical operation it seems to be customary to make up trains at Ashland of from 20 to 25 cars and to send these trains over the mountains solid. Such a train requires for the first 36 miles out of Ashland three of these most powerful engines, but for the balance of the way can be handled by two. The fuel used is oil, which costs, reduced to the price of coal, $2.80 per ton.

Mills in the Willamette Valley are not situated near the river and are not therefore as a rule upon the main line of the de-
39 fendants, but are reached by short branch lines of different lengths. The service of collecting this lumber and putting it into the trains of the defendant upon its main line is therefore a somewhat expensive one.

The present rate of $5 per ton is equivalent to 25 cents per 100 pounds, and the defendants insist that this rate, tested by a comparison with lumber rates in different parts of the United States, taking into account the operating conditions which obtain here, can not be regarded as extravagant.

Comparisons with other lumber rates are not conclusive nor greatly profitable, since operating conditions are seldom the same, much less, traffic and commercial conditions. The old rate of $3.10 paid, as above stated, an average return of about 5 mills per ton-mile. There are many instances within the knowledge of the Commission where lumber has been and is now being transported for a less charge than this. The $3.10 rate was certainly a low one, but we are satisfied that it did yield when established, has ever since yielded, and would for the future yield a substantial return over and above the cost of operation and that its maintenance in the past has contributed much to the prosperity of the defendants.

In 1898 no lumber moved from the Willamette Valley. In 1907 the defendants handled from these mills more than 12,000 carloads of revenue-paying lumber. This development of the lumber industry has not only directly contributed a large amount of traffic but has developed the entire country, and has thus added indirectly as much or perhaps even more to the net profits of the defendants. It is not susceptible of doubt that this development would not have taken place at the time it did but for the putting in of the $3.10 rate, as previously stated.

The railroad from the southern line of Oregon north is owned by the Oregon & California Railroad Company, but these lines have been operated since before 1898 under lease by the Southern Pacific Company, which now also owns the capital stock of the Oregon & California Company.

The Southern Pacific Company in its returns to this Commission does not state separately the result of operations upon the lines of

the Oregon & California Company, and we have nothing in this case from which we can make a critical examination of the results of those operations through a series of years. It does appear that in the year 1897 the gross earnings from operation upon these lines were $1,436,037 and operating expenses $1,112,835, leaving net earnings of $323,202, and that the same figures for 1907 were, gross earnings $6,417,153, operating expenses $4,766,350, net earnings $1,650,803. The mileage in 1897 was 654 miles, in 1907 665 miles, of which about 300 miles are main line and the balance branches.

It appears, therefore, that net earnings in 1907 were more than gross earnings had been ten years before and that present net earnings are about $2,500 per mile. When it is remembered that more than half of this mileage consists of branch lines, not expensive to construct, it would appear that the above returns are fairly compensatory.

The above figures abundantly confirm the judgment of Mr. Huntington that a rate should be made which would develop the lumber industry of this region, and in our opinion the maintenance of this $3.10 rate would be also for the advantage of the defendants in the immediate future. These mills are established and they will continue to do business upon a margin of profit much smaller than would have been sufficient to induce their construction in the beginning. But it has been seen that their only market for poorer grades of common lumber is to the south and that without a market for this class of lumber they cannot successfully compete with other mills upon the Pacific coast.

As already suggested, when the price of stumpage has sufficiently increased in other sections, this lumber in the Willamette Valley can be manufactured at a profit upon the $5 rate, but for the present it seems highly probable that the continuance of the lower rate is necessary to a continuance of the business itself in anything like its present volume.

Upon these facts, what conclusion should be reached as to the justice of the advance of April 18, 1907, and as to the lawfulness of the present rate? The defendants insist that the present rate is a reasonable one and that the defendant companies are under no obligation to maintain a rate which is unreasonably low for the future because they have voluntarily done so in the past. The complainants insist that the present rate is unreasonable. They say that the old rate paid the defendants a handsome profit over the cost of operation; that under it and largely by reason of it the present prosperity of these defendants has come, and that, this being so, it would be most unjust to allow them to advance it, in view of the circumstances under which it was established and has been maintained in the past. The complainants earnestly insist that we may and should look into the past history of this rate in disposing of this question.

It is not claimed that the defendants were under contract with any one shipper, nor with the general body of shippers in that region to maintain the $3.10 rate. It is doubtful if such a contract would be valid, and at any rate no such contract was ever made. While the defendants announced that they would establish a rate of $3.10 they

never stated that they would maintain this rate in effect for any given length of time. What happened was this:

41 It was well understood that this lumber could not be manufactured and would not be manufactured unless a rate was established from these mills to San Francisco, which was fairly equivalent to the water rate from Portland and Puget Sound points to that same market. This being so, the Southern Pacific Company had possibly two courses open to it. It might continue in effect its 25-cent rate until such time as with the depletion of forests elsewhere this timber in the Willamette Valley could be profitably marketed upon that rate. Such a course would deprive that company of immediate traffic, but would in the end give to it a much larger measure of profit from the handling of the traffic. It might, in the second place, establish the low rate and develop the industry at once in competition with mills at other points upon the Pacific coast. It elected to adopt the latter policy. It so announced to the public and to individuals who were contemplating the construction of mills in this section. It inaugurated that policy by the putting in of the rate itself. Having maintained that rate for five years, it withdrew it, but upon further consideration announced once more than it would adhere to its former policy and would restore the rate, which it did.

Upon the strength of this action these mills in the Willamette Valley have been established; they would never have been established without it; they can not profitably exist to-day without it. The expense of handling traffic under this rate is not greater than the revenue, thereby occasioning a loss which must be made up upon other business. Such a rate would present an entirely different question from that before us. Here the business is remunerative directly, beside being highly beneficial to the defendants indirectly.

In a recent communication to this Commission touching advances in freight rates, an eminent railroad authority stated that it was the universal opinion of traffic men that rates ought not to be advanced pending unfilled contracts. This is manifestly for the reason that the business public are entitled to depend, within reasonable bounds, upon the continuance of rates which have been voluntarily established.

Such has been the view of this Commission in the past. In *Bates v. Pennsylvania R. R. Co.*, 3 I. C. C. Rep., 435, the complainant was a manufacturer of corn products at Indianapolis, where he had constructed and was operating an extensive plant. For many years rates upon corn and corn products had been the same from his mill to eastern points of consumption, but the defendant company reduced the rate upon corn 4½ cents without any corresponding reduction upon the product. It was the contention of the complainant that this change in the relation between the rate upon the raw material and the manufactured article would destroy the business which he had built up. The Commission pronounced against the lawful-

42 ness of any change in the relation between the rates upon these two commodities largely upon the ground of having once established the relation the carrier was bound to stand by it.

In *Kauffman Milling Co. v. Missouri Pacific Ry. Co. et al.*, 4 I. C.

C. Rep., 417, the exact reverse of this proposition was presented. The defendant in that case made a higher rate upon the product than it made upon the raw material from St. Louis and other milling points into Texas. It was claimed that the rate should be the same and that to impose the higher rate upon the manufactured product was a discrimination against that commodity and against complainant as a manufacturer at St. Louis. The Commission pronounced, however, in favor of a differential largely upon the ground that the condition was one which had been long in existence and ought not to be unnecessarily disturbed.

No argument and no citation of authority can, however, add to the naked statement of the fact. Take, for example, the case of Mr. Miles. This gentleman had established a mill upon the strength of the $3.10 rate, which he was operating in the year 1903. He had also made arrangements for the building of another mill and for the purchase of a large tract of timber. Hearing rumors that this rate was to be withdrawn, he suspended his operations. Subsequently, upon being assured by the officials of the Southern Pacific Company that it would continue its former policy, and relying upon the restoration of the rate itself, he resumed the construction of his mill and completed the purchase of his timber. Is it just and reasonable that within less than three years this company shall be allowed to again reverse its policy and to destroy the value of this man's property? We think not; the tremendous interests involved in the stability of railway rates must not be juggled with in this manner. We do not hold, as a general proposition, that a railroad company having established and maintained a rate is conclusively estopped from advancing that rate, nor that where a rate is put in for a special purpose it may not be taken out when that purpose has been subserved and new conditions have grown up. We apply our decision entirely to the facts in the case before us. Considering all the circumstances, having in mind the just interests of all parties, we conclude that these defendants ought to maintain, for the immediate future at least, substantially the same rate which they have maintained in the past.

It has been seen that this timber in the Willamette Valley must be given a rate to San Francisco which is substantially equivalent to the water rate from Portland. All parties were originally satisfied that the $3.10 rate substantially met this condition. Water charters from Portland have ranged somewhat higher in the last few years than when this original rate was established; the testimony indicates from 25 to 50 cents per thousand feet. This being so
43 it seems reasonable that this lumber rate should be also somewhat advanced, and we think that for the next two years a rate of 17 cents per 100 pounds, or $3.40 per ton, might properly be charged.

The second question presented is whether this rate shall also be applied to west side mills above Corvallis, or whether rates from those mills shall be in the future as in the past, 25 cents per ton higher than from mills upon the east bank.

It will be remembered that the main line of the defendants runs from Portland south along the east bank of the Willamette River, but that there is another line with branches extending up the west

bank of the river. Connection is made between these lines upon the west and the east at Portland and also by crossing the river from Corvallis to Albany. The road from Corvallis to Albany was formerly an independent line known as the Corvallis & Eastern. Lumber originating upon the west bank for transportation south over the lines of the defendant companies could either be hauled to Portland by the defendants and thence by their own lines south or it could be hauled by the defendants' lines south to Corvallis and thence over the Corvallis & Eastern to a connection with the main line at Albany. The rate charged by the Corvallis & Eastern for this service was 25 cents per ton. The length of the road is about 15 miles, and this would seem to be, under the circumstances, a reasonable charge.

Within a comparatively recent time it appears that the Southern Pacific interests have purchased the stock of the Corvallis & Eastern, so that that road, while still operated in name as an independent proposition, is in reality a part of the defendants' lines. The complainants insist that for this reason the charge of 25 cents should no longer be imposed against the west bank.

The cost to the defendants of handling this lumber from the west side is undoubtedly more, upon the average, than where it originates upon the east side. Rates in the past have always been higher from that section, and in our opinion there is no reason why the same difference may not exist for the future and for the same reason.

The third question arises upon the claim of the interveners that whatever rate is established from mills in the Willamette Valley should be extended to Portland. It has been seen that originally the $3.10 rate applied to Portland, but that since 1903 this has not been true. During a portion of the time the rate from there to San Francisco has been higher than $5, but the rate now is $5 and this has been the ruling rate since August, 1903.

The considerations which induce us to apply this lower rate to mills in the Willamette Valley do not obtain in case of Portland. These manufacturers have the benefit of the water rate and are not therefore dependent at all upon the defendants for reaching the San Francisco market. The low rate was only applied to Portland
44 for a comparatively short time and has not been in force there for the last four years. It is of no special importance to the manufacturer at that point and no injustice is done by withdrawing it. The distance from Portland is considerably greater than the average distance from Willamette Valley mills, and, on the whole, we think the defendants should be left to their option in meeting or declining to meet water rates at Portland. The claim of the interveners is therefore denied.

We are of the opinion, then, that the present rate of $5 from all mills in the Willamette Valley, not including Portland, is unjust and unreasonable; that for the future from mills upon the east bank, and upon the west bank south of Corvallis, that rate should not exceed 17 cents per 100 pounds, or $3.40 per ton, upon rough, green fir lumber and lath, and that from points upon the west bank north of Corvallis it should not exceed $3.65 per ton. All questions of reparation are reserved for further proceedings.

An order will be issued accordingly.

HARLAN, *Commissioner*, dissenting:

The $3.10 rate is conceded to have been a low rate, and I do not understand that the present rate of $5 is condemned in the opinion of the Commission as unreasonable in itself and apart from the matters of estoppel on which the opinion seems largely to rest. In my judgment we are not warranted, under the act to regulate commerce as amended, in condemning a rate upon such considerations. When preference and discriminations are not alleged, the test of the lawfulness of a rate is whether as a rate for the service offered it is reasonable or excessive. This is not the test to which the rate complained of in this proceeding has been subjected as I read the opinion. It is not held to be unlawful on the ground that it is an excessive rate, but is reduced rather because of certain supposed equities existing between the complaining shippers and the defendant carriers. Without enlarging upon this view of the matter it will suffice to say that I do not understand that we are authorized to deal with a rate on those grounds.

For these reasons and also because I consider the present rate not to be an unreasonable rate I am constrained to withhold my assent to the disposition made of the complaint.

The Chairman of the Commission authorizes me to say that he joins in this dissent.

45 *Order.*

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 1st day of June, A. D. 1908.

Present: Martin A. Knapp, Judson C. Clements, Charles A. Prouty, Francis M. Cockrell, Franklin K. Lane, Edgar E. Clark, James S. Harlan, Commissioners.

No. 1331.

WESTERN OREGON LUMBER MANUFACTURERS' ASSOCIATION, WILLAMETTE VALLEY LUMBER COMPANY, FALLS CITY LUMBER COMPANY, CURTISS LUMBER COMPANY, CHARLES K. SPAULDING LOGGING COMPANY, BOOTH-KELLY LUMBER COMPANY, J. H. CHAMBERS, H. M. PARVIN, and CRUZAN BROTHERS, Complainants, and INMAN-POULSEN LUMBER COMPANY, OREGON & WASHINGTON LUMBER COMPANY, EAST SIDE MILL & LUMBER COMPANY, STANDARD BOX AND LUMBER COMPANY, JONES LUMBER COMPANY, and ST. JOHNS LUMBER COMPANY, Interveners,

v.

SOUTHERN PACIFIC COMPANY and OREGON & CALIFORNIA RAILROAD COMPANY.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and

the Commission having, on the date hereof, made and filed a report containing its conclusions thereon:

It is ordered, That the defendants, the Southern Pacific Company and the Oregon & California Railroad Company, be, and they
46 are hereby, notified and required to cease and desist, on or before the 15th day of August, 1908, from charging, demanding, collecting, or receiving for the transportation of rough, green fir lumber and lath, in carloads, their present rate of $5 per ton from points upon the east bank of the Willamette River, in the state of Oregon, and upon the west bank thereof south of Corvallis, Oreg., and upon the west bank of said river north of said Corvallis, to San Francisco, Cal., and bay points.

It is further ordered, That said defendants be, and they are hereby notified and required to establish and put in force, on or before the said 15th day of August, 1908, and maintain in force thereafter during a period of not less than two years, and apply to the transportation of rough, green fir lumber and lath, in carloads, a rate not exceeding $3.40 per ton from points upon the east bank of said Willamette River and upon the west bank thereof south of said Corvallis, to San Francisco, Cal., and bay points; and a rate not exceeding $3.65 per ton from points upon the west bank of said river north of said Corvallis, to said San Francisco and bay points, not including in either rate Portland, Oreg., as a point of origin.

And it is further ordered, That said defendants be, and they are hereby, authorized to make effective upon three days' notice to the public and the Interstate Commerce Commission, given in the manner required by law, such rates as it may be necessary for said defendants, or either of them, to establish for the purpose of complying with this order. The schedules containing such rates must bear the notation that said rates are issued under the authority hereby granted, and must refer to the title and number of this case.

47 In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

SOUTHERN PACIFIC COMPANY, a Corporation, and OREGON & CALIFORNIA RAILROAD COMPANY, a Corporation, Complainants,

vs.

INTERSTATE COMMERCE COMMISSION, Defendant.

UNITED STATES OF AMERICA,
Northern District of California, ss:

H. A. Jones, being first duly sworn, deposes and says: I am Freight Traffic Manager of the Southern Pacific Company, and have occupied this position for nearly two years last past, and I have been engaged in this business for more than Thirty years.

I am familiar with the traffic of the Southern Pacific Company and of the Oregon & California Railroad Company, and with the conditions obtaining on the lines of said companies, relating to such traffic.

I have read the bill of complaint in above-entitled case, verified by C. H. Redington, Assistant Treasurer, and know the facts therein stated to be true of my own knowledge.

This affidavit is made to be used as an affidavit in support of said bill.

H. A. JONES.

48 Subscribed and sworn to before me this 24th day of July, 1908.

[NOTARIAL SEAL.] E. B. RYAN,
Notary Public in and for the City and County of San Francisco, State of California.

On the 3d day of August, 1908, the Attorney General of the United States filed in said Court the following certificate:

In the Circuit Court of the United States for the Northern District of California.

SOUTHERN PACIFIC COMPANY ET AL.
v.
THE INTERSTATE COMMERCE COMMISSION.

To the clerk of said court:

I hereby certify that the above entitled cause now pending in said court is a suit in equity brought by the Southern Pacific Company against the Interstate Commerce Commission, under the act of Congress entitled "An Act to regulate Commerce," as amended by the act of June 29, 1906, and that said suit is in my opinion a case of general public importance.

49 I therefore request that, complying with the provisions of the act of Congress entitled "An Act to expedite the hearing and determination of suits in equity pending or hereafter brought under the act of July 2, 1890, entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies,' 'An Act to regulate commerce,' approved February 4, 1887, or any other acts having a like purpose that may be hereafter enacted," approved February 11, 1903; and in further compliance with the provisions contained in Section 16 of the "Act to regulate Commerce," approved June 29, 1906, you will file this certificate among the records of the above entitled cause, and immediately furnish a copy thereof to each of the Circuit Judges of the Ninth Circuit, to the end that said case shall be given precedence over other cases in said court, and be assigned for hearing at the earliest practicable date before not less than three of the Circuit Judges of said Circuit, as is provided by the said act of February 11, 1903.

CHARLES J. BONAPARTE,
Attorney General.

Washington, D. C., July 27th, 1908.

On the 25th day of September, 1908, the Interstate Commerce Commission filed its demurrer to the foregoing bill of complaint in letters, figures and form as follows:

50 In the Circuit Court of the United States, Ninth Circuit, Northern District of California. In Equity.

SOUTHERN PACIFIC COMPANY and OREGON & CALIFORNIA RAILROAD COMPANY, Complainants,
vs.
INTERSTATE COMMERCE COMMISSION, Defendant.

Demurrer.

The demurrer of the Interstate Commerce Commission, the defendant above named, to the bill of complaint of the Southern Pacific Company and the Oregon & California Railroad Company, the above named complainants:

This defendant, by protestation, not confessing or acknowledging all or any of the matters or things in said complainants' bill to be true in maner and form as therein set forth and alleged, files this, its demurrer, and for cause of demurrer shows that said complainants have not, as appears by their said bill made out any title to the relief therein prayed.

The defendant specially demurs to the complainants' bill, and assigns as such grounds of demurrer:

I.

51 That it appears from the face of the bill that all the proceedings required by the statute to be taken were duly taken and had; that after a formal complaint and answer a full hearing was had; and that the Commission arrived at its conclusion after being fully advised; that the order complained of was duly given, made, rendered and served; and that the conclusion of said Commission was not arbitrary, or reached through fraud; and, therefore, the act of the said Commission is final and conclusive and not reviewable by the Courts.

II.

That said bill does not set forth any fact or circumstance showing fraud or arbitrary action on the part of the Commission, and if it be claimed that the act of the Commission was in any way irregular or arbitrary the same is not set forth in the said bill of complaint.

III.

That it does not appear from said bill how or wherein the rate of $3.10 mentioned in paragraph IX of said bill is or was an unreasonably low rate, nor does it appear wherein or how the rate of $5.00 was and is a reasonable rate.

IV.

That said bill fails to state any fact or facts from which the Court can determine from the face of the bill of complaint that the rate complained of is unreasonably low or confiscatory. Said bill does not set out the cost of transportation of lumber or other merchandise, or the gross receipts of the complainants, or the gross expenses, or the net profits, or loss, as the case may be, or any other fact or circumstance which, if true, would show that the rate fixed by the defendant was unreasonably low.

52 V.

That said bill does not purport to state that the rate complained of is confiscatory, or would produce a loss to the complainants, but simply states that the rate is unreasonably low and unremunerative, without stating the amount of profit, if any, said rate would produce or what percentage of profit complainants consider to be a remunerative profit.

VI.

That the bill is indefinite, vague, uncertain, and ambiguous in this, that it states merely the conclusion of the pleader and does not allege any definite ultimate facts from which the Court could determine whether the rate fixed by the Commission in its order complained of is unremunerative and less than the cost of the service performed.

VII.

That complainants have an adequate remedy at law.

VIII.

Wherefore, and for divers other good causes of demurrer appearing in said bill this defendant demurs thereto and humbly demands the judgment of this Court whether it shall be compelled to make another or further answer to said bill; and prays to be instantly dismissed with its costs and charges in this behalf most wrongfully sustained.

UNITED STATES OF AMERICA,
State and Northern District of California,
City and County of San Francisco, ss:

Luther M. Walter makes solemn oath and says; That he is
53 the attorney for the above named defendant, the Interstate Commerce Commission, and that the above demurrer is not interposed for purpose of delay, but that the same is true in point of fact.

LUTHER M. WALTER.

Subscribed and sworn to before me this 25th day of September, 1908.

[Seal U. S. Circuit Court.]

J. A. SCHAERTZER,
Deputy Clerk.

I hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

LUTHER M. WALTER,
Solicitor for Defendant.

ROBERT T. DEVLIN,
U. S. Atty.
JOSEPH N. TEAL,
Of Counsel.

The matter having been fully argued, the Court was unanimously of opinion that the Bill failed to state sufficient grounds to entitle the complainants to equitable relief. Whereupon, by leave of Court had and obtained, on the 1st day of October, 1908, the complainants filed in said Court their Amended Bill of Complaint, which Amended Bill of Complaint is in letters, figures and form as follows:

54 No. 14760.

In the Circuit Court of the United States, Ninth Circuit, Northern District of California. In Equity.

SOUTHERN PACIFIC COMPANY ET AL., Complainants,
vs.
INTERSTATE COMMERCE COMMISSION, Defendant.

Amended Bill of Complaint.

P. F. Dunne, W. W. Cotton, F. C. Dillard, C. W. Durbrow, Solicitors for Complainants.
Wm. F. Herrin, Of Counsel.

55 No. 14760.

In the Circuit Court of the United States, Ninth Circuit, Northern District of California. In Equity.

SOUTHERN PACIFIC COMPANY and OREGON & CALIFORNIA RAILROAD COMPANY, Complainants,
vs.
INTERSTATE COMMERCE COMMISSION, Defendant.

Amended Bill of Complaint.

To the Honorable, the Judges of the Circuit Court of the United State for the Northern District of California:

Southern Pacific Company, a corporation duly incorporated under the laws of the State of Kentucky, and thereby a citizen
56 thereof, and Oregon & California Railroad Company, a corporation duly incorporated under the laws of the State of Oregon, and thereby a citizen thereof, by leave of Court bring this their amended bill of complaint against the Interstate Commerce

Commission, a body corporate duly organized and existing under and by virtue of the Act of Congress of February 4, 1887, entitled "An Act to Regulate Commerce," and the various Acts supplementary thereto, hereinafter for the sake of convenience called "The Commission," and thereupon your orators complain and say:

I.

At the time of the entering of the order by the Commission hereinafter referred to, at the time of the filing of the complaint bringing about said order, and continuously since long prior to that time, your orators have been corporations organized as aforesaid, and by virtue of their charter powers engaged in the business of operating railways in the carriage of freight and passengers between States and Territories of the United States, and more particularly between the States of Oregon and California, under joint through arrangements and tariffs of rates, fares and charges, duly established, published, and filed with said Commission under said Acts of Congress to regulate commerce, to which Acts your orators are subject in the interstate carriage of freight and passengers. Each of your orators now has, and during all said time has had, its principal
57 operating office in the Northern District of the State of California. The Honorable Martin A. Knapp, who resides in the City of Washington, District of Columbia, is the Chairman and presiding officer of said Commission, and Edward A. Moseley, Esq., is Secretary thereof.

II.

The matter and amount involved in this suit exceeds the sum or value of $2000, exclusive of interest and costs. The suit arises under the Constitution and Laws of the United States, in that, as will hereinafter appear, your orators complain that certain provisions of the Act by virtue of which the Commission fixed the rates hereinafter shown are in contravention of that Constitution; and in that your orators bring this suit under authorization of said Act to regulate Commerce, as well as under the general equity jurisdiction of this Court.

III.

The main line of the Oregon & California Railroad extends from the California-Oregon State Line through the Willamette Valley to Portland in the State of Oregon. It has sundry branch lines in said valley. The Southern Pacific Company has a line of Railway extending northward from the City of San Francisco, in the State of California, connecting at the California-Oregon State Line with the rails of the Oregon & California Railroad Company. On, and for a long time prior to April, 1907, your orator, Southern Pacific Company, operated as part of its system the Oregon & California
58 Railroad, and was operating a continuous line of railway from San Francisco to Portland, carrying over it freight and passengers from one State to the other, under tariffs of rates, fares,

and charges, duly established, published, and filed with the said Commission. Prior to said April 18, 1907, your orators established a certain tariff or schedule of rates and charges known as Southern Pacific Local Tariff No. 47, I. C. C. No. 2874, which was duly published and filed with the said Commission, and which became effective on said 18th day of April, 1907. By this tariff the rate for carriage of lumber and forest products, which include rough green fir lumber and lath, between points in the Willamette Valley in the State of Oregon and various points in California, and among others to San Francisco and what are known as San Francisco Bay points, being points on the Bay of San Francisco which can be reached by carriers by vessel, and likewise by your orator Southern Pacific Company, including San Francisco, Alameda, Oakland (Market Street), Oakland (Adams Wharf), Oakland Wharf, Oakland (Sixteenth Street), Stock Yards, West Berkeley, San Pablo, Hercules, Vallejo Junction, South Vallejo, Port Costa, Benicia, Martinez, Bay Point, Peyton, Cornwall and Antioch, was fixed at $5 per ton of 2000 pounds in carload lots. Said rate having become effective on the date aforesaid, your orators were engaged in the carriage of lumber and forest products, including rough green fir lumber and lath, at said rate, when, on or about the — day of November, 1907,
59 a certain complaint was filed before the said Commission by the Western Oregon Lumber Manufacturers' Association and others against your orators, complaining that said rate, as applied to rough green fir lumber and lath, was unreasonable, and praying a reduction of the same. On or about the 1st day of June, 1908, the said Commission made its certain report and order, which are herewith filed and marked "Exhibit A," and prayed to be inspected and considered herewith, by which it ordered and required your orators to cease and desist on or before the 15th day of August, 1908, from charging, demanding, collecting, or receiving for the transportation of rough green fir lumber and lath in carload lots their rate of $5 per ton of 2000 pounds from points upon the east bank of the Willamette River in the State of Oregon and points on the west bank of said river south of Corvallis, Oregon, and points upon the west bank of said river north of said Corvallis, to San Francisco, California, and Bay points; and further ordered your orators to establish and put in force on or before the 15th day of August, 1908, and maintain in force thereafter for a period of not less than two years, and apply to the transportation of rough green fir lumber and lath in carload lots, a rate not exceeding $3.40 per ton of 2000 pounds from points on the east bank of said Willamette River and points upon the west bank thereof south of Corvallis to San Francisco, California, and Bay points, and a rate of not exceeding $3.65 per ton of 2000 pounds from points upon the west bank of said river
60 north of said Corvallis to San Francisco, California, and Bay points, not including in either rate the City of Portland, Oregon, as a point of origin; and further ordered and required your orators to publish and make effective said rates. Said order is in words and figures as follows, to wit:

"*Order.*

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 1st day of June, A. D. 1908.

Present: Martin A. Knapp, Judson C. Clements, Charles A. Prouty, Francis M. Cockrell, Franklin K. Lane, Edgar E. Clark, James S. Harlan, Commissioners.

No. 1331.

WESTERN OREGON LUMBER MANUFACTURERS' ASSOCIATION, WILLAMETTE VALLEY LUMBER COMPANY, FALLS CITY LUMBER COMPANY, CURTISS LUMBER COMPANY, CHARLES K. SPAULDING LOGGING COMPANY, BOOTH-KELLY LUMBER COMPANY, J. H. CHAMBERS, H. M. PARVIN, and CRUSAN BROTHERS, Complainants, and INMAN-POULSON LUMBER COMPANY, OREGON & WASHINGTON LUMBER COMPANY, EAST SIDE MILL & LUMBER COMPANY, STANDARD BOX & LUMBER COMPANY, JONES LUMBER COMPANY, and ST. JOHN LUMBER COMPANY, Intervenors,

vs.

SOUTHERN PACIFIC COMPANY and OREGON & CALIFORNIA RAILROAD COMPANY.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its conclusions thereon:

61 It is ordered, that the defendants, the Southern Pacific Company and the Oregon & California Railroad Company, be and they are hereby notified and required to cease and desist, on or before the 15th day of August, 1908, from charging, demanding, collecting, or receiving, for the transportation of rough, green fir lumber and lath, in carloads, their present rate of $5 per ton from points upon the east bank of the Willamette River, in the State of Oregon, and upon the west bank thereof south of Corvallis, Oreg., and upon the west bank of said river north of said Corvallis, to San Francisco, Cal., and bay points.

It is further ordered, that said defendants be and they are hereby notified and required to establish and put in force, on or before the said 15th day of August, 1908, and maintain in force thereafter during a period of not less than two years, and apply to the transportation of rough, green fir lumber and lath, in carloads, at a rate not exceeding $3.40 per ton from points upon the east bank of said Willamette River, and upon the west bank thereof south of said Corvallis, to San Francisco, Cal., and bay points; and a rate not exceeding $3.65 per ton from points upon the west bank of said river north of said Corvallis, to said San Francisco and bay points, not including in either rate Portland, Oreg., as a point of origin.

And it is further ordered, that said defendants be, and they are hereby authorized to make effective upon three days' notice to the public and the Interstate Commerce Commission, given in the manner required by law, such rates as it may be necessary for said defendants, or either of them, to establish for the purpose of complying with this order. The schedules containing such rates must bear the notation that said rates are issued under the authority hereby granted, and must refer to the title and number of this case."

62 Said order was duly served on each of your orators by mailing a copy thereof to the president of your orators at his usual place of business. By further order of the Interstate Commerce Commission, the time when said order will become operative and said rates will go into effect is the 15th day of October, 1908, and unless said order is annulled, suspended or set aside by this court, it will become effective on said date.

IV.

Your orators aver and charge that in making said order and endeavoring to establish said rates, said Commission acted without warrant of law; that the said Act of 1887 to regulate commerce, and the several Acts amendatory thereof and supplementary thereto, particularly the amendment of June 29, 1906, popularly known as the "Hepburn Bill," under which said Commission professed to act, are in violation of the Constitution of the United States in that they profess to confer upon said Commission executive, legislative, and judicial powers. More specifically pleading in this behalf, your orators say: All through said Acts administrative powers are conferred upon the Commission. In section 15 the Commission is authorized to act as a court, to take judicial cognizance of complaints filed for damages, and after hearing to award damages, which award establishes a *prima facie* right in the complainant, and which no carrier against whom the award has been made can resist except by

63 assuming the burden of proof and overthrowing the *prima facie* effect of the Commission's award. The award can be resisted only under penalty of the carriers paying not only the usual costs of suit but an attorney's fee to complainant in addition if cast in the action.

By Section 15 of said Act, said Commission is authorized and empowered, after a hearing upon complaint, whenever in its opinion any rate or charge demanded, charged or collected by any carrier subject to the Act is unjust or unreasonable, or unjustly discriminatory, or unduly preferential or prejudicial, to determine and prescribe what will be the just and reasonable rate or charge to be thereafter observed in such case as the maximum to be charged, and to make an order that the carrier shall cease and desist from demanding, charging, or collecting the rate or charge complained of and condemned by said Commission, and shall not thereafter, for a period not exceeding two years, publish, demand, or collect any rate or charge in excess of the maximum rate or charge so prescribed by said Commission as a substitute for the rate or charge condemned.

Under the provisions of said Section and of Section 13 of the Act, in which the complaint containing a statement of the charges made is more particularly provided for, the Commission is empowered to proceed, and the proceeding itself is against the particular carrier or carriers, and such carrier or carriers only as are charged with unreasonableness in the matter of its or their rates; and upon
64 hearing and trial of such carrier or carriers in said proceeding, the said Commission, under the aforesaid sections, is authorized to adjudge the rate or charge of said particular carrier or carriers to be unreasonable, and as a consequence thereof to adjudge against said particular carrier or carriers another different and lower rate as the maximum to be charged by such particular carrier or carriers in such case, for a period not exceeding two years. Such proceeding, hearing, trial, determination and judgment involve and require the exercise of judicial power by the said Commission, and it is not competent to Congress to invest said Commission with such power; and any investiture, distribution or exercise of such power in, to or by said Commission, is in violation of the Constitution of the United States, and particularly so much thereof as provides for the distribution and exercise of the judicial authority of the United States; and herein reference is made to Section 1 of Article III of the Constitution of the United States; and the Commission has and possesses no such judicial power.

Further pleading as to that provision of Section 15 of the Act to Regulate Commerce as amended, which declares that the Commission shall prescribe what shall be the reasonable rate or rates, charge or charges, to be observed as the maximum to be charged, your orators say this provision is contrary to the Constitution of the United States, and especially to Section 1, Article I, above quoted, in that, by that article all legislative power is confined to the Congress of the United States. The prescribing of a maximum
65 rate which carriers may charge is a legislative function. Congress has not prescribed a maximum rate to govern in the cases provided for, but by said Act delegates this power to the Commission, and in doing so places in its hands legislative power.

V.

Your orator avers that in and by Section 1 of the said Act to Regulate Commerce it is provided that all charges made by any common carrier subject to the Act, for any service rendered or to be rendered in the transportation of property, or in connection therewith, shall be just and reasonable, and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful. That your orators, as the owner and operator of the railroads from Portland, Oregon, to San Francisco, California, and the franchises, equipment and appurtenances connected with such railroad, are entitled to the possession, management and beneficial use thereof, and are authorized to establish rates for the transportation of freight thereover, subject only to the provision that such rates shall be just and reasonable. In and by Section 15 of the said Act, the Interstate Commerce Commission is authorized and empowered, after hearing

upon complaint, whenever it shall be of the opinion that any of the rates or charges demanded or charged or collected by any common carrier for the transportation of property as defined in the first section of the Act are unjust or unreasonable or otherwise in violation of any of the provisions of the Act to determine and prescribe
66 what will be a just and reasonable rate or rates, charge or charges, to be thereafter observed in such case as the maximum to be charged, and to make an order that the carriers shall cease and desist from such violation to the extent that the Commission find the same to exist, and shall not thereafter publish, demand or collect any rate or charge for such transportation in excess of the maximum rate or charge so prescribed. That in and by said Section 15 of said Act it is provided that all orders of the Commission prescribing rates shall take effect within a reasonable time, and not less than 30 days after the making of the same, and shall continue in force for such period, not exceeding two years, as established and prescribed by the order of the Commission, unless the same shall be suspended or modified or set aside by the Commissioners, or be suspended or set aside by a court of competent jurisdiction. That in and by the 16th section of the said Act it is provided that any carrier or any officer or agent of any carrier, who knowingly fails or neglects to obey any order of the Commission prescribing rates as provided in said section of the Act, shall forfeit to the United States the sum of $5000 for each offense, and that each distinct violation shall be deemed a separate offense, and in case of continuing violation, each day shall be deemed a separate offense.

You orator avers that the present rates of $5 per ton, attempted to be set aside by said order, but fixed and established by your orators for the transportation of rough green lumber and lath in car-
67 loads from points upon the east bank of the Willamette River in the State of Oregon, and on the west bank of the Willamette River south of Corvallis, Oregon, and on the west bank of the Willamette River north of said Corvallis, to San Francisco, California, and to the Bay points mentioned in the order of the said Commission, and each of the said rates, are and will be for more than three years hence, low, just and reasonable rates for the service performed in the transportation of said commodities between said places and each of them, and that the rates prescribed by the Commission in and by its said order, namely, a rate not exceeding $3.40 per ton from points upon the east bank of the said Willamette River and upon the west bank thereof south of said Corvallis to San Francisco, California, and Bay points, and a rate not exceeding $3.65 per ton from points upon the west bank of said Willamette River north of said Corvallis to said San Francisco and Bay points, not including in either of them Portland, Oregon, as a point of origin, are, and each of said rates is and will be for more than three years hence, unjust and unreasonable for the service performed in the transportation of rough green fir lumber and lath in carloads and are and will be inadequate compensation to your orators for the service rendered.

Your orators aver that by Article V of the amendments to the Constitution of the United States your orators have the right to a

judicial investigation in a court by due process of law, under the forms and with the machinery provided by the wisdom of
68 successive ages for the investigation judicially of the truth of the matter in controversy of the question as to the reasonableness of the said $5 rate so fixed and established by your orators, and of the question as to the reasonableness of the said $3.40 and $3.65 rates so fixed and established by the said Commission as aforesaid, and of each of said questions.

That the attempt of the Commission in and by said order sought to be set aside herein, to set aside and annul the rates established by your orators, and the establishing of the said rates prescribed by said orders and each of them by the said Commission, against the will of your orators, was *pro tanto*, the taking of the property of your orators and depriving your orators thereof without due process of law, in violation of Article V of the Amendments to the Constitution of the United States; and that the making of the said order of the Commission herein set out was *pro tanto* a taking and depriving the Company of its property without due process of law, in violation of Article V of the Amendments to the Constitution of the United States, and thereby void and of no effect.

Your orators further aver that the attempt of Sections 15 and 16 of the said Interstate Commerce Act to make any order of the Commission prescribing rates to be charged for the transportation of property become effective of its own force prior to a hearing in a court of justice of the question of the reasonableness of the rates prescribed by said order and said Sections 15 and 16 in that regard are
69 void for the reason that in and by Section 1, Article III of the Constitution of the United States all judicial power is conferred upon a Supreme Court of the United States and such inferior courts as Congress may establish, and the Judges of said Supreme Court and such inferior courts shall hold office during good behavior, and the said Commission has no power to prescribe any time upon which any order of the said Commission prescribing rates for the transportation of property to take effect, and that the said order of the said Commission is void and of no effect.

That Section 16 of said Act is unconstitutional and void in that it is therein provided that your orators and each of them, and any officer or agent of your orators, knowingly failing or neglecting to obey the said order of the Commission herein set forth, shall forfeit to the United States the sum of $5000 for each day that your orators or said officers or agents fail to obey said order, notwithstanding that the question of the reasonableness of the rates established by the said order have not been judiciously investigated by due process of law in any court of justice, and in that said section makes said order a finality unless suspended by the Commission or by some court of competent jurisdiction, and subjects your orators to penalties and forfeitures as therein provided, and deprives your orators of their property without due process of law, contrary to Article V of
70 the Amendments to the Constitution of the United States, and the force and effect of said order sought to be enjoined and set aside herein is under said Act and will be unless enjoined

and set aside by this court before October 15, 1908, to cause your orators' property to be forfeited through the operation of such penalties, and will subject the agents of your orators to such penalties, notwithstanding said penalties are only imposed because of said order of said Commission attempting to prescribe and establish such rates, or will be to compel your orators in order to avoid such penalties to put into effect before October 15, 1908, the unreasonable rates so attempted to be prescribed by said Commission in and by said order.

VI.

Making specific reference to the opinion of the Commission herewith filed, your orators aver and charge that the Commission did not, and it affirmatively appears from said opinion that they did not find the rate of $5 per ton to be unreasonable, but your orators aver found such rate to be reasonable in and of itself. Your orators say it further appears from the said opinion and the truth is, the Commission not only failed to find the rate of $3.10 or the rates established by them to be reasonable, but on the contrary specifically found the rate of $3.10 to be a low rate, and found the rates established by them to be, as in truth they are, substantially the same as the rate of $3.10, and thus also low rates. Yet because of matters extraneous to the question of the reasonableness of the rate, the Commission ordered your orators to desist from charging the rate of $5 per
71 ton, and ordered them to charge rates not exceeding the amounts fixed by them as above shown, thus fixing as maxima, rates not found by them to be reasonable, but on the contrary found to be low. The Commission's only power under the Act is to fix a rate as a maximum for the future which shall be a just and reasonable rate for the particular service rendered. In reducing the rate in this case to an amount less than this and which is not a fair return for the service rendered the Commission mistook the law and misinterpreted their powers.

VII.

Your orators aver the Willamette Valley lies in the State of Oregon commencing at the Columbia River and extending southward a distance of about 150 miles, with the Willamette River flowing throughout it. Near the mouth of the Willamette River is situated the City of Portland, on the waters of that river. The Willamette River flows into the Columbia River, which in turn flows into the Pacific Ocean, and these rivers are navigable for ocean-going vessels from Portland to the ocean. Between the mouth of the Columbia River and Puget Sound is Gray's Harbor. The cities of Seattle and Tacoma in the State of Washington are situated on an inlet from the Pacific Ocean, navigable for ocean-going vessels. About the cities of Portland, Tacoma and Seattle, about Gray's Harbor and other places having communication by vessel with San Francisco and Bay points, are extensive lumber producing forests, and at these
72 places in the years 1897 and 1898 there were mills for the manufacture of lumber, and continuously since then the manufacture of lumber has been carried on there. Between these places and the City of San Francisco and other San Francisco Bay points,

vessels ply carrying lumber. For such lumber as was manufactured, or might be manufactured, in the Willamette Valley south of Portland, there then was no through rate through Portland to the territory lying east of Portland, and no rate which would permit of lumber being thus marketed. About the year 1898 certain persons engaged in the manufacture of lumber and operating mills at Saginaw and Coburg in that valley, sought of the Southern Pacific Company the establishment of a low rate from these points to San Francisco, one low enough to meet water competition from the points above named, from which lumber could move by ocean-going vessels to San Francisco and Bay points.

In 1897 the lumber rate had been $5 from Portland, Coburg and Saginaw to San Francisco and Bay points, Stockton, Sacramento, San Jose and Santa Clara. On April 25, 1898, this rate was reduced to $4 from Portland and East Portland, to San Francisco, Vallejo Junction and Oakland, but remained unchanged so far as the other points were concerned. On June 6, 1898, the $4 rate was extended to said Valley points, applying therefrom from Portland, Albany, Coburg and Saginaw to San Francisco and Bay points, but remained at $5 to the other named California points. On April 22, 1899, the said $4 rate from Portland, Albany, Coburg and Saginaw to
73 San Francisco Bay points was lowered to $3.10, and lowered to $3.50 to the other California points. On the 1st of January, 1900, the said rate from Portland and the other named Willamette Valley points was extended south on the Woodburn-Springfield branch of the Oregon & California Railroad south to Tallman. On the 13th of August, 1902, said rate from Portland to Willamette Valley points was still farther extended, reaching south of Drain as far as Glendale, and being so applied until August 20, 1903, when said rate was withdrawn from Portland. The aforesaid reductions in said lumber rate were made with reference to water competition and in aid of the development of the industries in which the said persons were engaged.

These rates were low, less than what was just and reasonable for the services rendered, and were so known to be by persons shipping under them, but were made to meet the water competition above shown. There was no contract or agreement or representation that your orators would maintain a rate of any specific amount, or that they would maintain any rate which they might establish for any given time.

On the withdrawal of the $3.10 rate from Portland, a rate of $5 was established there. But the rate of $3.10 remained applicable to practically all points manufacturing lumber in the Willamette Valley, other than Portland, and to and including Glendale, as aforesaid, except that from points west of the river at certain places and on the Wendling Branch the rate was 25c per ton more.

74 At the time of the existence of this rate to San Francisco Bay points, your orators also had in existence a scale of rates to what is known as San Francisco Bay District, which included points near by the Bay points, and to which the rate was made by adding to the $3.10 to San Francisco Bay points the local to the places of delivery until the maximum of $5 was reached. Outside of the

Bay points and Bay District points the rate from Willamette Valley points to other points in California beyond the Bay District exceeded the sum of $5. Since 1898 many mills have been built in the Willamette Valley, until there are now in that valley south of Portland about 250 mills. About January, 1904, your orators replaced the rate to San Francisco Bay points and to Bay District points by a rate of $5 per ton of 2000 pounds; that is to say, the rate of $5 from Willamette Valley points took the place of the rate of $3.10 to Bay points, and of the rate of $3.10 plus the local rate to Bay District points. At the earnest solicitation of certain lumber manufacturers, your orators about May, 1904, restored from Willamette Valley points the rate of $3.10 as applied to rough green fir lumber and lath to San Francisco and Bay points, and the $3.10 scale to San Francisco Bay District points. Said $3.10 rate as a basis plus the local rate to San Francisco Bay District points, until the maximum of $5 was reached, was made applicable from Portland to said Bay District points at and from the time that the said $5 rate from Portland to San Francisco Bay points was established, and con-
75 currently therewith. But there was no contract to maintain such rates, and there was no contract or agreement that these rates should be maintained for any given length of time. April 18, 1907, your orators withdrew the $3.10 rate and scale as applied to rough green fir lumber and lath, and applied the rate of $5 as is above pleaded.

At the time the rate of $3.10 was first established, there was as aforesaid no movement of lumber from the Willamette Valley via Portland to the East, but lumber from the valley moved southward over the lines of your orators, and such as moved East went over the lines of the Southern Pacific Company and connections to Utah, Colorado, Nevada, Arizona and other States and Territories. During all this time lumber from Portland and other points in Oregon, and Washington, lying upon the waters navigable for ocean vessels, moved to San Francisco and Bay points. In the year 1901 Portland was opened as a gateway to the East for lumber from the Willamette Valley, and the same rate was applied through Portland to all points east of Pocatello, Idaho, that applied to lumber originating at Portland or other points in Oregon or Washington west of the Cascade Mountains. To points west of Pocatello was applied the rate from Portland, plus the local rate from point of origin to Portland. The route from the Willamette Valley to the south passes over the Siskiyou Mountains and over a way where the grades are severe, reaching as much as 3.3 per cent.; where only small trains can be handled and the expense of operation is great. By
76 the year 1907 about two-thirds of the lumber from the Willamette Valley moved to the East via Portland, and only about one-third to the South over the lines of your orators, and of the total output of the Willamette Valley so moved, less than 20 per cent. was destined to San Francisco Bay and Bay District points, and about 15 per cent. to San Francisco Bay points. These percentages include all kinds of lumber, of which percentages, as your orators are informed and believe, the rough green fir lumber and lath would not

exceed 60 per cent. At that time less than 20 per cent moved into the territory affected by the rate of $3.10.

VIII.

Your orators aver that the facts set forth in the preceding paragraph (No. VII) appeared on the hearing before the Commission without dispute. The Commission did not adjudge the rate established by your orators under their tariff effective April 18, 1907, to San Francisco and Bay points to be unreasonable in itself as applied to the carriage of rough green fir lumber and lath, or greater than is warranted by the cost and value of the service rendered; but did find a rate of $3.10 to be a low rate. The Commission raised the rates from $3.10 and $3.35 to $3.40 and $3.65 respectively, but made this slight raise only because there had been some increase in charter rates, and held, as indeed the truth is, that the rates are substantially the same as the former rates. They held that the rates in existence prior to April 18, 1907, had been established by your orators under the circumstances shown in paragraph VII above; that on
77 the faith of these rates the lumber industry had been developed in the Willamette Valley, and that your orators were therefore estopped from making an advance in the rates as made by them, but that your orators must for the indefinite future continue from points in the Willamette Valley to San Francisco Bay points unreasonably low rates for the service rendered by your orators in the transportation of rough green fir lumber and lath. That in and by the report of the Commission in the proceeding wherein was made the order sought to be set aside the following statement was made:

"Take, for example, the case of Mr. Miles. This gentleman had established a mill upon the strength of the $3.10 rate, which he was operating in the year 1903. He had also made arrangements for the building of another mill and for the purchase of a large tract of timber. Hearing rumors that this rate was to be withdrawn, he suspended his operations. Subsequently, upon being assured by the officials of the Southern Pacific Company that it would continue its former policy, and relying upon the restoration of the rate itself, he resumed the construction of his mill and completed the purchase of his timber. Is it just and reasonable that within less than three years this company shall be allowed to again reverse its policy and to destroy the value of this man's property? We think not; the tremendous interests involved in the stability of railway rates must not be juggled with in this manner. We do not hold, as a general proposition, that a railroad company having established and maintained a rate is conclusively estopped from advancing that rate, nor that where a rate is put in for a special purpose it may not be taken out when that purpose has been subserved and new conditions
78 have grown up. We apply our decision entirely to the facts in the case before us. Considering all the circumstances, having in mind the just interests of all parties, we conclude that these defendants ought to maintain, for the immediate future at least, substantially the same rate which they have maintained in the past."

Your orators aver that by reason of the case of the said Miles

therein stated, said Commission made said order requiring your orators to establish from points in the Willamette Valley to San Francisco Bay points unreasonable, low rates for the service rendered by your orators in the transportation of rough green fir lumber and lath, and required your orators in and by said order to maintain said rates for a period of two years, and held that by reason of the case of the said Miles as therein stated, your orators were estopped from making an advance in the rates as made by them, and your orators are advised and believe that in so treating your orators as estopped, the Commission mistook and exceeded their powers under the Act to regulate commerce.

At the time that this cause was tried before the Commission there was tried the case of Oregon & Washington Lumber Manufacturers' Association *et al. v.* Union Pacific Railroad Company *et al.*, I. C. C. Docket No. 1327, involving the rates on lumber from various points in the States of Oregon and Washington, including the Willamette Valley to Eastern points. In said case the Commission used and applied to the rates then under consideration, this language:

"Competitive rates made by the several carriers serving the
79 different points of production may be lower than they could be compelled to make. The law permits the making of a competitive rate to the extent above mentioned, but there is no law that requires the carriers to go to that extent. This controversy cannot be determined wholly upon the ground that complainants have enjoyed the lower rate for many years, and that interests have been built up thereunder, and that loss of business, investments, profits and markets will result under the increased rates. It must be determined on the justness or reasonableness of the rates in controversy. Neither do the interests of the public require that lumber should be transported at other than just and reasonable rates."

And in referring to the rates, also used and applied to the rates then under consideration this further language:

"It must be justified on the ground that it is just and reasonable regardless of a prosperous condition of the industry affected, or where it will be absorbed. So that we have these propositions: If the old rates were too low to be just and reasonable, complainants cannot urge their loss as a ground for maintaining them; if the old rates were just and reasonable, the defendants cannot justify the advance on the ground of the prosperity of the lumber business, or that the loggers will absorb the increase in the decreased price of raw material."

Your orators aver that the Commission exceeded in their holding by which they reduced your orators' rates in this case any power granted them by law; that in so holding, the Commission attempted not to determine the reasonableness of the rates, as was their only power under the Act to regulate commerce, but to adjudicate
80 a question of estoppel between shippers and the railways, arising out of the conduct of the latter, and to establish for the future a rate less than a reasonable rate and less than the just and reasonable value of the service rendered in the transportation

of the lumber to which the rate is applied, as the result of such adjudication, and attempted to require your orators to establish from points in the Willamette Valley to San Francisco Bay points unreasonably low rates for the purpose of meeting rates made by water carriers engaged in transporting lumber from ports on the Columbia River, Gray's Harbor, and on Puget Sound, to such San Francisco Bay points.

And your orators aver that on and by the premises aforesaid the Commission proceeded to a decision and conclusion upon a mistake and misconception of the law, and that their decision, conclusion and order herein are and each of them is based upon a misconception and mistake of the law.

IX.

Your orators aver that the rates of $3.40 and $3.65 per ton as ordered and prescribed by said Commission were and are unreasonably low rates, and will so continue to be during the period fixed for the application of the same by the said Commission, and are less than what is and will be during said period just and reasonable for the service rendered, and the said rates do not and will not during said period pay the cost of the service rendered; and that the rate of $5 per ton was, is and will be for the period fixed by said
81 Commission no greater than a just and reasonable rate for the service rendered in the transportation of rough green fir lumber and lath from points in the Willamette Valley to San Francisco, California, and Bay points.

Your orators further aver that there was heard and decided by the Commission the case of Oregon and Washington Lumber Manufacturers' Association *et al.* against Union Pacific Railroad Co. *et al.* No. 1327, at the same time the Willamette Valley lumber case in which the order sought herein to be enjoined was made. The Commission fixed lumber rates for much longer distances over less expensive and difficult distances than over the more expensive and difficult route involved in said Willamette Valley lumber case. That is to say, said Commission on the lumber rate from Portland to Omaha, a distance of 1799 miles, prescribed a rate of 50 cents per 100 pounds, or .550 cents per ton per mile; Portland to Denver, 1400 miles, 40 cents per 100 pounds, or .570 cents per ton per mile; Seattle to Salt Lake City, 1089 miles, 40 cents per 100 pounds, .734 cents per ton per mile; Portland to Cheyenne, 1283 miles, 40 cents per 100 pounds, or 62 cents per ton per mile. That each and all of said rates so fixed and established by the said Commission were fixed and established by the Commission as just and reasonable rates for the transportation service rendered, and each and all of said rates applied to rough green fir lumber and lath. It is a fact in railway operations, and it is everywhere conceded, including the reports and decisions of the Commission and the courts, that as the dis-
82 tance increases the cost per ton per mile decreases. Your orators aver that upon the hearing of the complaint before the Commission, it was conceded by complainants that the rate of $3.10 was a low rate, one of the lowest rates on lumber in the United States. It was also conceded that the rate of $5 was, in and of itself,

a reasonable rate, and that demand would not have been made for its reduction if the lower rate had not been originally established. The evidence introduced on the trial of the cause before the Commission showed that the former rate of $3.10 was an exceedingly low rate; that the rate of $5 is in and of itself a reasonable rate for the service performed, and nothing appeared to the contrary. Wherefore, your orators charge that upon the undisputed facts it was the duty of the Commission not to reduce the rate of $5, and especially that they had no power to reduce the rate to the amounts at which they fixed them as maxima to be charged, when such amounts were conceded and shown to be unreasonably low.

Your orators will produce on the hearing hereof a full transcript of the evidence introduced on the hearing before the Commission and of the statements of counsel, and pray your Honors that the same be considered in connection with and in support of this bill.

X.

Your orators aver that in establishing, and, after it was once withdrawn, in restoring the recognized low rate of $3.10, they
83 did not directly or indirectly promise or agree that they would maintain it for any time. They in no way abandoned their discretion to increase the rate when their judgment indicated it should be increased; nor was there any promise that the rate for the future should be governed by the water rates or made with regard to them, but the doing of this was retained within the discretion of your orators.

Your orators deny that any mills were built in the expectation that the rates established, or practically the same rates, would be maintained, or in expectation that your orators would abandon their right to increase the rates as the exigencies of traffic might demand and the judgment of your orators should dictate. They deny that any one had the right to harbor any such expectation.

Your orators say that in the last several years the lumber business has greatly increased, forests of white pine have been depleted, the demand upon the yellow pine forests has been large. The result has been a great demand for lumber from the forests of the Pacific Coast, with a consequent handsome profit in the manufacture of it, and the value of said lumber has greatly increased. Your orators aver it is because of these conditions, and because lumber manufacturers expected to reap much profit, that the lumber industry has so grown on the Pacific Coast, including the Willamette Valley.

As above appears, at the time the rate of three dollars
84 and ten cents ($3.10) was established the only market for lumber from Willamette Valley was to the South. Since the opening of the Portland gateway, as was stated by witnesses for complainant on the hearing before the Commission, and as is true, the market thus opened up to Willamette Valley mills is their most desirable and profitable market.

At the time the rate of three dollars and ten cents ($3.10) was established, lumber in the Willamette Valley was of comparatively little value. Since said time it has greatly increased in price and

value until at the time of the establishment of the rate of five dollars ($5), in 1907, it was worth about double what it was worth at the time of the establishment of the rate of three dollars and ten cents ($3.10).

At the time of the establishment of the rate of three dollars and ten cents ($3.10), the low price of lumber and restricted demand for it, and the fact that the mills of the Willamette Valley could profitably seek markets only through the lines of your orators and south of Portland, the establishment of a low rate was esteemed a wise thing to do by your orators. Owing to changed conditions the continuance of that rate, or one approximately as low, is not necessary to the prosperity of the lumber industry, and would be to force your orators to carry lumber at an unreasonable and unremunerative rate.

Your orators say that when the rate of $3.10 was first established, probably the very great bulk of the lumber from the Wil-
85 lamette Valley went to San Francisco and Bay points, but that at the time of the establishment of the rate of five dollars ($5), as above appears, about two-thirds (⅔) of the lumber from Willamette Valley sought the markets of the East through the Portland gateway, and less than twenty per cent. (20%) went to San Francisco and Bay points. The true amount was about fifteen per cent. (15%).

Your orators aver that no power exists in the Commission and duty rests upon carriers to make rates so low that shippers may find a market, and they further aver that no duty rests upon them of making or continuing a rate at so low a figure that products carried by them shall find a market in the same place where they come into competition with products carried by water, but that the option is left with the carrier to meet water competition. They aver, however, upon information and belief, that shippers of rough green fir lumber and lath from the Willamette Valley can still reach the markets of San Francisco and Bay points at a profit. Your orators say, further, that it is a fact that in the manufacture of lumber it is the average profit which is considered by the lumbermen. In such manufacture, some lumber is sold at large profit beyond cost of manufacture, some at much less profit, some at no profit, and some of the lower grades are sold at less than the cost of manufacture. Your orators aver that the shippers of the Willamette Valley have no right to demand or expect of your orators that they shall
86 make a rate of carriage so low upon their common grades of lumber that these grades can reach a market at an average distance of more than six hundred (600) miles from the point of production, and there be sold at a profit in competition with lumber moving to those points by water.

XI.

Your orators say that since the establishment of the rate of three dollars and ten cents ($3.10) the cost of operation of all railways, including those of your orators, has vastly increased; that labor and material have so increased in price that rates then reasonable are not so now.

Your orators say that in handling this traffic they have to transport it over a line, 250 miles of which can be operated only at a great expense. The gradients and curvatures are such that only light trains can be hauled, and many engines have to be used. This line of railway passes over the Siskiyou Mountains, which rise abruptly to a height of 4124 feet. In a distance of fifteen (15) miles the road rises over a peak 2388 feet. At this point the most powerful engine of your orators, being an engine of four (4) drivers, and weighing 171.5 tons, can only handle 345 gross tons. For a distance of 47 miles an engine of that type can only handle 530 gross tons; for a distance of 49 miles only 700 gross tons; and for a distance of 107 miles only 500 gross tons; and for 36 miles only 345 gross tons. Over 203 miles of your orators' line helper engines
87 have to be used. At some places it takes one helper engine, or two engines, to handle light trains, and for a distance of 36 miles it takes three engines to handle the trains. All of which entail a very heavy expense of operation. Your orators' line is so situated that it is subject to frequent washouts, making the track difficult to keep in condition for operation and causing heavy expense for repair. And your orators' line of railway in said Willamette Valley and from points therein to San Francisco is one of the most difficult and expensive lines of railway in the United States to operate and maintain.

The lumber moving from Willamette Valley is gathered largely from branch lines maintained almost solely for lumber and operated at heavy expense. Freight moves in much greater quantities from the Willamette Valley to the South than from the South into the valley. This brings about a large movement of empty cars to the North for the hauling southward of lumber from the valley.

Your orators aver that for some time before it was changed, the rate of three dollars and ten cents ($3.10) was not a remunerative rate. They aver and charge that the rates established by the Commission will prove unremunerative.

Your orators say that by reason of the conformation of the Willamette Valley, and by reason of water competition made by the Willamette and Columbia rivers and the ocean, traffic con-
88 ditions in the valley are unusual and demand the judgment and discretion of experienced traffic men constantly in touch with those conditions. From their experience with those conditions, and satisfied that the rate of five dollars ($5) is just and reasonable to shippers, they establish the same. They aver that said rate is reasonable and say that the establishment of any rate less than this would be unreasonable.

Upon the hearing hereof your orators will produce sundry affidavits which they pray may be considered in connection with and in support of this bill.

XII.

Your orators say that if the rates established by the Commission are permitted to go into effect and shall ultimately be held to be unreasonable, your orators will suffer irreparable injury; that judg-

ing from the past, your orators believe the movement of cars per year from Willamette Valley mills to San Francisco and Bay points will be about one thousand (1,000); that the average loading of said cars is about twenty-nine (29) tons; of said cars eight hundred (800) would move under the three dollars and forty cents ($3.40) rate, and two hundred (200) under the rate of three dollars and sixty-five cents ($3.65), so that if the rates established by the Commission are permitted to go into effect, but ultimately held to be bad, your orators will lose the amount above indicated; that until the establishment of a new rate your orators will be forced to carry lumber at said
89 unreasonable rate, thus suffering irreparable injury in the reduction of their just revenues.

Your orators say that since the 18th day of April, 1907, they have been carrying lumber to San Francisco and Bay points at the rate of five dollars ($5) per ton. If the rates established by the Commission are permitted to go into effect there will be a multiplicity of claims for reparation and suits against your orators, against which they would have no adequate protection. Your orators say they are without any adequate remedy, except as your Honors may grant to them a writ of injunction as herein prayed for.

XIII.

To the end that your orators may obtain the relief to which they are entitled in the premises, they now pray:

First. That upon the filing of this bill your Honors will grant all such temporary and interlocutory restraining orders suspending the enforcement of the order of the Commission as may be necessary pending the further hearing of the matters of this bill.

Second. That this bill be set down for further hearing on a day certain to be named by your Honors, and that said Commission be given notice thereof and called upon to show cause why there should not be granted a preliminary injunction suspending their said order, and enjoining them, their officers, agents, servants and representatives, from enforcing the same, or instituting any
90 suits or taking any proceedings to enforce the same until final determination of this case; and that upon such day so fixed by your Honors, or as speedily thereafter as practicable, your Honors grant a preliminary injunction so suspending such order, and so enjoining said Commission, its officers, agents, servants and representatives.

Third. That upon final hearing said preliminary writ of injunction be made perpetual, and that it be decreed that said order of said Commission shall be forever set aside, annulled, and held for naught, and that said Commission, its officers, agents, servants and representatives, be forever enjoined from enforcing or taking any steps to enforce the same.

Fourth. That there be granted to your orators process of subpoena to said defendant the Interstate Commerce Commission, requiring them to duly appear and answer (but not under oath, the same being expressly waived) the several allegations of this bill.

Fifth. Your orators further pray for such other general and special relief as in equity and good conscience is meet and proper

SOUTHERN PACIFIC COMPANY,
OREGON & CALIFORNIA RAILROAD COMPANY,
By C. H. REDINGTON,
Assistant Treasurer.

[S. P. Co.'s Seal.]

P. F. DUNNE,
W. W. COTTON,
F. C. DILLARD,
C. W. DURBROW,
Solicitors for Complainants.

WM. F. HERRIN,
Of Counsel.

91 COUNTY OF SAN FRANCISCO,
State of California, ss:

I, C. H. Redington, being duly sworn, say that I am Assistant Treasurer of the Southern Pacific Company and of the Oregon & California Railroad Company, and that I sign the corporate name of complainants to the foregoing bill and attach the corporate seal. I further say that I have read the foregoing bill of complaint and that the allegations therein contained are true, except where made upon information and belief, and where so made I believe them to be true.

C. H. REDINGTON.

Sworn and subscribed to before me, H. T. Sime, a Notary Public in and for the County of San Francisco, in the State of California, this 1st day of October, 1908.

[NOTARY'S SEAL.] H. T. SIME

92 To the said amended bill was attached Exhibit A aforesaid, which said Exhibit A is the same as Exhibit A attached to the original bill of complaint.

Whereupon, on the 1st day of October 1908, the Interstate Commerce Commission filed its demurrer to said amended bill of complaint, in letters, figures and form as follows:

In the Circuit Court of the United States, Ninth Circuit, Northern District of California. In Equity.

SOUTHERN PACIFIC COMPANY and OREGON & CALIFORNIA RAILROAD COMPANY, Complainants,
v.
INTERSTATE COMMERCE COMMISSION, Defendant.

Demurrer.

The Demurrer of the Interstate Commerce Commission, the defendant above named, to the Amended Bill of Complaint of the Southern Pacific Company and the Oregon & California Railroad Company, the above named complainants.

This defendant, by protestation, not confessing or acknowledging all or any of the matters or things in said complainants' amended bill to be true in manner and form therein stated, set forth and alleged, files this its demurrer; and for cause of demurrer shows that said complainants have not, as appears by said amended bill,
93 made out any title to the relief therein prayed.

The defendant specially demurs to complainants' amended bill, and assigns as such grounds of demurrer:

1.

That it appears from the face of the said amended bill that all the proceedings required by the statute to be taken were duly taken and had; that after a formal complaint and answer a full hearing was had; and that the Commission arrived at its conclusion after being fully advised; that the order complained of was duly given, made, rendered and served; and that the conclusion of said Commission was not arbitrary, or reached through fraud; and, therefore, the act of the said Commission is final and conclusive, and not reviewable by the courts.

2.

That said amended bill does not set forth any fact or circumstance showing fraud or arbitrary action on the part of the Commission, and if it be claimed that the act of the Commission was in any way irregular or arbitrary the same is not set forth in the said amended bill of complaint.

III.

That it does not appear from said amended bill how or wherein the rates of $3.10, $3.40 or $3.65 mentioned in said amended bill are, or that either or any of said rates is, or was, or will be, an unreasonably low rate; nor does it appear how or wherein the rate of $5.00 mentioned in said amended bill was, is, or will be, a reasonable rate.

94 IV.

That said amended bill fails to state any fact or facts from which the court can determine from the face of the amended bill of complaint that the rates complained of are unreasonably low or confiscatory. Said amended bill does not set out the cost of transportation of lumber or other merchandise, or the gross receipts of complainants, or the gross expenses, or the net profits or loss as the case may be, or the cost of the carriage of a ton of lumber in carload lots from points in the Willamette Valley, exclusive of Portland, to San Francisco or Bay points, or any other fact or circumstance which, if true, would show that the rates fixed by the defendant were unreasonably low or confiscatory.

V.

That each and every portion of the amended bill which avers that the Act to Regulate Commerce as amended is unconstitutional does not state any ground for equitable relief.

VI.

That said amended bill does not state in facts well pleaded that the rates complained of are confiscatory, or would produce a loss to the complainants, but simply states that the rates complained of are unreasonably low and unremunerative, without stating the amount of profit, if any, said rates would produce, or what percentage of profit complainants consider to be a remunerative profit, and without stating in what degree, if any, or in what manner the rates fixed by the defendant are below the cost of the service.

95 VI.

That the amended bill is indefinite, vague, uncertain and ambiguous in, that it states merely the conclusion of the pleader, and does not allege any definite ultimate facts from which the court can determine whether the rates fixed by the Commission in its order complained of are unremunerative and less than the cost of the service performed.

VII.

That complainants have an adequate remedy at law.

VIII.

That from said amended bill of complaint there appear no facts which meet the objections urged by defendant, and found well founded by the court, to the validity of the original bill herein.

IX.

Wherefore, and for divers other good causes of demurrer appearing in said amended bill, this defendant demurs thereto, and humbly demands the judgment of this court whether it shall be compelled to make any other or further answer to said amended bill, and prays to be instantly dismissed, with its costs and charges in this behalf most wrongfully sustained.

UNITED STATES OF AMERICA,
State and Northern District of California,
City and County of San Francisco, ss:

Luther M. Walter makes solemn oath and says: That he is the attorney for the above named defendant, the Interstate Commerce Commission, and that the above demurrer is not interposed
96 for purpose of delay, but that the same is true in point of fact.

LUTHER M. WALTER.

Subscribed and sworn to before me, this 1st day of October, 1908.

[SEAL.] J. A. SCHAERTZER,
Deputy Clerk U. S. Circuit Court, Northern District of California.

I hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

LUTHER M. WALTER,
Solicitor for Defendant.

JOSEPH N. TEAL,
Of Counsel.
ROBT. T. DEVLIN,
U. S. Att'y, of Counsel.

The matter coming on for argument upon the demurrer to the said amended bill of complaint, and the same having been fully argued, the Court was divided in opinion as to whether said demurrer should be sustained. We hereby certify that the evidence and proceedings before the Interstate Commerce Commission, referred to in the said amended bill of complaint and filed therewith, are in words and figures as follows:

97 Interstate Commerce Commission, Washington.

I, Edward A. Moseley, Secretary of the Interstate Commerce Commission, do hereby certify that the papers hereto attached are true copies of the original transcript of the stenographer's notes of the testimony taken before said Commission on December 20 & 21, 1907, at Washington, D. C., in the case of the Western Oregon Lumber Manufacturers' Association *et al. v.* Southern Pacific Company *et al.* and of the exhibits to said testimony, with the exception of Anderson exhibit No. 2, page 42, now on file and of record in the office of said Commission.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the Commission this Eleventh day of July, 1908.

[Seal Interstate Commerce Commission, 1887.]

EDW. A. MOSELEY, *Secretary.*

98 *Stenographer's Minutes.*

Before the Interstate Commerce Commission.

Dec. 24, 1907, Chicago, Ill.

Docket No. 1331.

WESTERN OREGON LUMBER MANUFACTURERS' ASSOCIATION ET AL.
vs.
SOUTHERN PACIFIC COMPANY ET AL.

At Washington, D. C., December 20–21, 1907.

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Lumber went into Arizona on a $11.00 rate, p. 63.

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100 Before the Interstate Commerce Commission.

No. 1331.

WESTERN OREGON LUMBER MANUFACTURERS' ASSOCIATION ET AL.
vs.
SOUTHERN PACIFIC COMPANY ET AL.

WASHINGTON, D. C., *December* 20, 1907.

The Commission met at 10 o'clock a. m.
Present: Commissioners Prouty and Cockrell.

Appearances.

Mr. J. N. Teal, for the complainants.
Mr. W. H. Abel, for the intervenors.
Mr. W. W. Cotton and Mr. F. C. Dillard, for the defendants.

Commissioner PROUTY: We will take up the case, No. 1331, Western Oregon Lumber Manufacturers' Association and others against the Southern Pacific Company and others. You appear for all the complainants, do you, Mr. Teal?

101 Mr. TEAL: Yes, sir.

Commissioner PROUTY: Mr. Abel, you appear for the intervening petitioners?

Mr. ABEL: Yes, sir.

Commissioner PROUTY: Mr. Dillard, do you appear for the defendants?

Mr. DILLARD: Mr. Cotton and I.

Commissioner PROUTY: You may proceed.

Opening Statement of J. N. Teal on Behalf of the Complainants.

Mr. TEAL: This is a case, if the Commission please, that is brought by the Western Oregon Lumber Manufacturers' Association and other mill owners in the Willamette Valley in Oregon, whose mills are situated south of Portland, for the restoration of a rate on common, rough green lumber and one or two other articles of lumber to what is known as the San Francisco Bay points. It is a tariff that has been substantially in effect since 1899 from those points. I will explain it in detail in just a moment, because it must be understood in order to know what we are claiming and the position that we take.

102 Now, in this case since it has been brought, there was an intervening petition filed, and on yesterday I stated to the Commission, and the Commission agreed with me, that an intervenor must intervene on one side or the other. We have not the slightest objection, as I stated then, to the granting of the petition of the intervenors, but if this petition of intervention has been filed for the purpose of preventing the granting of the relief prayed for

by the petitioner, and that appears at any time during the trial of this cause, and that it was not filed in good faith for the purposes for which it was alleged it was filed, and if the relief asked is not the relief they propose to put before the Commission, and they want something else, then I shall ask the Commission to dismiss that complaint in intervention. Otherwise I shall be glad to aid them in every way I can.

Commissioner PROUTY: Mr. Teal, the Commission, in acting on these complaints, acts not only for the complainant, but for the whole community. These intervenors are located at Portland.

Mr. TEAL: Yes, sir.

Commissioner PROUTY: They object, as I understand it,
103 to a lower rate from Ashland, for example, than is made from Portland, claiming that water competition at Portland is the excuse for the low rate anyway, and that they are entitled to as low a rate as mills outside of Portland.

Mr. TEAL: In which we quite agree.

Mr. ABEL: That is our position.

Mr. TEAL: If that is the position, there will be no quarrelling in this case. We will see, however, what the position is later on.

Now, originally, in 1898 and 1899 this section of the Willamette Valley (indicating on map), the Oregon and California Railroad running through the Willamette Valley down to Portland, was not a milling section.

Commissioner PROUTY: The Oregon and California Railroad runs from Portland to San Francisco.

Mr. TEAL: I shall refer to the Oregon & California as the Southern Pacific system. It really runs from Portland to Ashland. It is all now the Southern Pacific. Of course we use these local names. It is the Southern Pacific Company—and I do not even know that that is the name of that north line, but it is all the Southern Pa-
104 cific, only this (indicating) is the Oregon & California line in Oregon.

As I say, in 1898 and prior to 1889, in this valley here there was no lumber production. Its mountains, or much of them, were covered with a very fine growth of timber of not a high quality. That is, the timber is much smaller than the coast timber. It cuts much more common, and it does not grade as high. It is not as good a quality as the coast timber.

Commissioner PROUTY: Is that fir timber, Mr. Teal?

Mr. TEAL: Yes; and there is some pine farther south, but I am speaking now of the fir timber that relates to this case.

At that time Mr. Huntington was in control of this road, and the road was doing but a very little business. If I remember rightly, in those days they ran about one train a day from San Francisco, and possibly a local in the valley, and their freight trains were few and far between. The only mills that were in the Willamette Valley at that time were local mills, sawing for local requirements.

At that same time, to the north here on the Columbia River
105 and at other points there were mills that you heard about in the other case, that were naturally developed on the coast,

where they had water communication. At that time I think I am correct in saying that there were no shipments of lumber by rail out of the Willamette Valley. The question then arose with the railroad people, with Mr. Huntington himself and with those in direct charge of the railroad, how they could create traffic, both local and through, and naturally, in going over the country, the first thing they saw was this unused timbered section, or the timber that was not being sawed.

We will show, as a matter of fact, that these gentlemen who were then in control of the road, for the purpose of creating the traffic, for the purpose of developing business and developing the country—a perfectly laudable purpose, and one for which they should receive full credit—talked with people who will be here before you, who went into the business then, and discussed the situation with them as to how the traffic could be created.

106 As a matter of fact, around San Francisco Bay and in San Francisco is the primary market on the coast for these common rough grades of lumber.

In discussing this situation, naturally the first thing they had to meet was the rate from the mills on the coast into San Francisco, and it was perfectly inevitable that unless that rate was made, it was utterly impossible that a saw mill could be built.

So that was the commencement and foundation of what we call the 3.10 rate in Oregon. Now, the Commission must understand that this 3.10 rate we refer to——

Commissioner COCKRELL: How much was that; $3.10 a ton?

Mr. TEAL: $3.10 a ton; yes, 15½ cents a hundred; and I will state that we do not claim that that is not a low rate. It is a low rate. In fact, I may say it is one of the lowest rates on lumber in the United States, and it was a rate put in, as I state, maintained for the purposes I state, and the railroad company is entitled to full credit for having done it.

Commissioner PROUTY: Let me ask you, Mr. Teal, this question.

107 Suppose that rate had never been lower than 25 cents a hundred pounds, which is $5 a ton, would you claim that this Commission today ought to reduce that rate?

Mr. TEAL: No; I don't think I would.

Commissioner PROUTY: That is to say, you do not claim the rate is unreasonable in itself?

Mr. TEAL: No I do not.

Commissioner PROUTY: You put your case entirely on the ground that these people represented to your clients and to other mill men in the Willamette Valley that they would establish this lower rate for the purpose of building up the industry in that valley, that the industry cannot exist there in competition with other sections unless that rate is maintained in effect?

Mr. TEAL: Yes, sir.

Commissioner PROUTY: And therefore the railroad is obliged to maintain it in effect?

Mr. TEAL: It has been maintained for eight or nine years. You have my position exactly, Mr. Commissioner.

Commissioner PROUTY: That simply shows that it has been maintained and industries have grown up; that the railroad company has, during that period, elected to maintain it and found it profitable, probably?

108 Mr. TEAL: You have stated my position exactly. I am not here complaining about the rates being high or low, because it is a low rate.

At that time they had in charge of their rates, or very shortly afterwards, a Mr. Markham, one of the most broad-minded railroad men it has ever been my good fortune to meet. He was constantly, in promoting this industry, doing everything he could to develope the traffic through there, because they absolutely required it, if their statements were true, because this road, assuming this to be true at that time and for some time prior, had constantly shown a deficit. I never quite understood that, but nevertheless that is what their reports did show. The result of these combined reasons that I speak about, was the putting in effect of the rate.

What I want to call the attention of the Commission to at this time is that this $3.10 rate never applied to any place but San Francisco. All in here and through here (indicating) all outside of this red circle, which I will explain in a moment, was a $5 rate or higher. The $3.10 rate was only a rate to enable them to market this side product, their common rough lumber, although on

109 the start it was made to apply to all lumber.

In this red section here, what is called the $3.10 scale applies. That is, the rate from these points on a $3.10 basis to San Francisco plus the local out, until it reached $5, was applied within that territory. So it might be $3.85 or $4.00 within that limited territory, but whatever it was, that is called the $3.10 scale.

Now, in putting in this rate they originally and always applied a 25 cent differential to the west side of the Willamette River.

Commissioner PROUTY: What is meant by the west side and the east side?

Mr. TEAL: The west side of the Willamette Valley is towards the ocean. I apprehend the reason of that is because at that time they had a longer haul around, to bring it in off this road (indicating) into Portland and get it out again; and probably prior to their acquisition of the Corvallis & Eastern, which is up here (indicating), I imagine they had to allow a differential on that road. That, of course, does not exist today.

Commissioner PROUTY: Where is the main line from Port-

110 land?

Mr. TEAL: The main line is on the east side of the river.

Commissioner PROUTY: The $3.10 rate has always applied to all points on the main line?

Mr. TEAL: On the main line, and 25 cents higher to all points on the west side excepting for the brief period that I will tell you about in just a moment.

Commissioner PROUTY: How does the lumber originating on the west side of the river get on to the main line at the present time?

Mr. TEAL: The only way it can get onto the main line is from Corvallis. They can go over on the Corvallis & Eastern to Albany.

Commissioner PROUTY: Is there a line running down the west bank?

Mr. TEAL: Yes; there is a line from Portland to Corvallis, and there is a line running across called the Corvallis & Eastern. So on the west side they would have an additional haul. There is no question about that. I mean they would have an additional haul today, owning the Corvallis & Eastern; but I want to have the case
111 perfectly understood.

When this rate was first put in, it applied to Portland. That was about 1899. I will not speak of all the changes, because it is not necessary. It took in Portland. The $3.10 flat rate to San Francisco points and the $3.10 scale all applied to Portland, and to points in the Willamette Valley, with that 25 cent differential I speak of on the west side of the river.

Mr. DILLARD: Pardon me if I correct you there; or would you prefer that I wait until you finish?

Mr. TEAL: No; correct me now.

Mr. DILLARD: I think when that rate was put in, it applied to Portland, Albany, Coburg and Saginaw alone.

Mr. TEAL: That is correct. It was 1899. I did not intend to separate each one. When it was first started it did apply to four points.

Commissioner PROUTY: That was strictly a water competitive rate, was it?

Mr. TEAL: A strictly competitive water rate, and based upon the reasons I have given. In the history of the case I prepared, I have put in every change that occurred in the rate.

112 Commissioner PROUTY: That first rate, then, was not put in to develope the Willamette Valley. That was put in to meet water competition to Portland?

Mr. TEAL: No; Saginaw and these places where the first rate was put in were the first places where the mills started. That is where these men went to start their mills.

Commissioner PROUTY: How far from Portland, for example, is Saginaw?

Mr. TEAL: About 130 miles.

Commissioner PROUTY: South?

Mr. TEAL: South; yes, sir. That is where they went to start the mills. In 1890, the operation of this road was extended down to Drain. That is, it kept working south.

Commissioner PROUTY: How far is that south of Portland?

Mr. TEAL: I should think about 145 miles; maybe 150; and at that time it was placed in operation on the west side of the valley, with this 25 cent differential.

In 1902 the $3.10 rate territory was extended to Glendale.

113 Commissioner PROUTY: How far is that?

Mr. TEAL: I should think Glendale must be about 285 miles, maybe 275, from Portland; and it was finally extended to the California state line.

Commissioner COCKRELL: What place on the California state line?

Mr. TEAL: They do not give any place; just on the line.

Commissioner COCKRELL: What is the nearest station?

Mr. TEAL: Ashland; but that is really more of a paper rate in there than otherwise.

In August of 1903, this rate was cancelled to Portland, and the rate raised to $5. On November 1st, 1905, it was raised at Portland to $7.50. On December 7th that was cancelled again at Portland and reduced to $5, remaining the same in the Valley during these periods.

Commissioner PROUTY: You mean remaining at $3.10?

Mr. TEAL: Yes.

On December 7th of that year the rates were extended to the Woodburn Branch, on the east side, commencing here (indi-
114 cating), limited, however, to points south of Tallman on that branch, and commencing at Salem on the main line.

On January 1st, 1904, all the rates were changed, and there was put in a flat rate of five dollars from all points, Portland included.

Mr. COTTON: That was what year?

Mr. TEAL: January 1st, 1904. That continued until May 10th, 1904, when Mr. Stubbs and some of the officials of the Southern Pacific system came out there and went over the situation themselves in person. The result of the change of that rate was to close the mills in the Willamette Valley. As I say, Mr. Stubbs came out, and other officials, in their private cars, and went all over this situation, with the result that on May 10th, 1904, the rate was reinstated in what we call the Willamette Valley, that is, from Salem south and points on this branch, and points on the west side division, down to Tualatin, very close to Portland.

In that connection, I wish to state that in making these differentials the mills in South Portland had also this 25 cent differential against them. The reason of that was because from South Portland
115 and North Portland, where all the rest of the lines come in, there is no connection, and I assume that differential was made because they have to make a long haul around and quite a long haul to get it back down to the east side down into Portland, and I imagine rather an unprofitable haul.

Now, this rate remained——

Commissioner COCKRELL: What was that last rate?

Mr. TEAL: It was 25 cents higher than the $3.10. There is one thing at that point that I wish to call to the attention of the Commission. Prior to May 10th, 1904 these rates applied to all lumber. In arriving at a settlement of this proposition and putting it back in, the $3.10 rate was limited to common rough fir lumber and laths, I think, other rates taking a five dollar rate.

Commissioner PROUTY: Did Portland take the $3.10 rate on lumber.

Mr. TEAL: Not at that time; no. It was not changed back to them. That rate has continued down until April 18th, of this year. In connection with that, I wish to state that in making the change

in this rate in January of this year the companies sent out
116 their notice, giving sixty days' notice, that this tariff was going to be filed and the change made. They afterwards extended that a further period of time.

Mr. COTTON: How much longer did they extend it?

Mr. TEAL: I was going to give the date. So that it did not go into effect until April 18, 1907. As to the time it was given, naturally we do not complain of that, because that was as long as anybody could claim; but as a matter of fact, the car situation was such that even on this extended time it was utterly impossible, apparently, or at any rate they did not furnish the cars to move the lumber that these people had on their other orders. The efforts they made and that sort of thing, I will not dwell upon. I only state as a fact that they did not.

Now we come to the only reason based upon the practice that had prevailed for the change in these rates.

Commissioner PROUTY: Let me — if I understand what the changes have been. You say in the fall of 1903 the rate from Portland was advanced, and as I understand the $3.10 rate never applied to Portland since then?

117 Mr. TEAL: Never.

Commissioner PROUTY: That rate has always been as high as five dollars?

Mr. TEAL: Since that time; yes, sir.

Commissioner PROUTY: But they did, in the spring of 1904, reapply this rate to the commerce in the Willamette Valley?

Mr. TEAL: Yes, sir.

Commissioner PROUTY: South of Portland?

Mr. TEAL: Yes, sir.

Commissioner PROUTY: And that rate ran pretty well up to Portland?

Mr. TEAL: Yes; very close to it.

Commissioner PROUTY: It did not include South Portland.

Mr. TEAL: No; it did not include South Portland, but it ran very close to Portland. I will give you some idea of it on the map. Here is Portland where my pencil is now, and there is Tualatin. It ran within ten or twelve miles of Portland.

Commissioner PROUTY: Do you know what the local rate was from Tualatin to Portland?

118 Mr. TEAL: No; I could not say. It would not go that way, anyhow.

Now we come to what was the real reason and what I believe would have justified a temporary advance if they had so desired. The charter rate to Portland, from 1899 up to May of 1906, or probably a little later, had probably not varied on a ton basis half a dollar from $3 a ton during that entire period. There may have been just a few ups and downs. Then came this tremendous demand for lumber for the San Francisco market, on account of the fire in San Francisco. You all know when the San Francisco fire occurred. Charters immediately jumped, and in January 1907, when this notice was given, charters probably reached the highest point, which was about $9.50 to $10. They immediately began to fall thereafter,

until April when this rate went in they were back to about $6, and by July of this year they were down again to their normal condition.

At that time—and of course it may have produced some results—the Southern Pacific, owing to the fact of their necessities, were compelled to and were shipping very large quantities of lumber by water, and actually paying in money a very much higher price than
119 their rail shipments, owing to this sharp advance at that time.

Commissioner PROUTY: You say the Southern Pacific were shipping lumber. You mean they were shipping lumber required for use on their railroad?

Mr. TEAL: Yes; on their railroad. I simply wanted to give you a view of the situation that existed at that time. The result that followed this advance, as soon as it could be felt, and it was felt almost at once, was precisely the same result that followed in 1904, when the rates were changed, because if they cannot get into the San Francisco market this common rough lumber in competition with these other points, they simply cannot operate in the Willamette Valley.

Commissioner PROUTY: The whole Willamette Valley has the same rate east that Portland has, has it?

Mr. TEAL: Well, it depends on what you mean by east.

Commissioner PROUTY: It has the same rate to Utah territory?

Mr. TEAL: To Utah yes, but not to Idaho.

Commissioner PROUTY: Has it not the same rate to the Missouri River?

120 Mr. TEAL: Yes, sir; but this lumber that goes to San Francisco will not go to the Missouri River.

Commissioner PROUTY: That is owing to the quality of the lumber.

Mr. TEAL: Owing to the quality of the lumber. Of course I do not say that circumstances cannot arise, under extraordinary circumstances, with enormous raises, when that could be done; but I am speaking of the lumber industry as it exists in our country. It cannot go into Idaho.

Mr. ABEL: May I ask you a question Mr. Teal?

Mr. TEAL: Yes.

Mr. ABEL: Is it not a fact that the Willamette Valley mills ship the same grades of lumber east that Portland does?

Mr. TEAL: Yes; I should say they do.

Mr. ABEL: And on the same rates?

Mr. TEAL: Yes; and on the same rates. I am not attacking Portland here. I am not claiming anything against it. So I say unless these rates into this point can be maintained, I think the evidence will show beyond any question that these Valley mills cannot
121 operate, under normal and ordinary conditions.

Commissioner PROUTY: That seems to be your case, Mr. Teal. If they can, there is no reason from your statement, why the rates should be reduced, because you say the rate is low enough, unless those men have been induced to build their mills there, and ought to be protected.

Mr. TEAL: That is correct. I want you to understand, Mr. Commissioner, that I do not claim the Commission has a right to compel the railroad, under ordinary circumstances, to meet water rates or any other competition.

Commissioner PROUTY: You can argue that when you get to the argument of the case. We will get at the facts now.

Mr. TEAL: Yes, sir. I think I have stated the case substantially.

Commissioner PROUTY: Let me ask you one more question. Was that rate of $3.10 applied to San Francisco proper?

Mr. TEAL: Only.

Commissioner PROUTY: Did it not apply to certain other points around San Francisco Bay?

122 Mr. TEAL: Yes; a few points around San Francisco Bay.

Commissioner PROUTY: But to any point outside of San Francisco, there was added to the $3.10 rate the local?

Mr. TEAL: San Francisco or Bay points.

Commissioner PROUTY: And the local rate from San Francisco to the country points?

Mr. TEAL: Yes.

Mr. DILLARD: With a maximum of five dollars.

Commissioner PROUTY: At the present time, the rate has been made five dollars to all those points?

Mr. TEAL: Yes, sir.

Commissioner PROUTY: That whole country?

Mr. TEAL: Yes, sir, commencing with the California state line. So that on the rate per ton per mile, there is very little in that, because there is only a certain portion that proceeds to a certain point.

Commissioner PROUTY: You may go on with the evidence. Do you desire to make a statement, Mr. Cotton?

Mr. COTTON: I will make a brief statement so that you will understand the issues.

123 Commissioner PROUTY: Very well.

Opening Statement of W. W. Cotton on Behalf of the Defendants.

Mr. COTTON: I understand Mr. Teal takes the position, and therefore we will proceed upon that theory, that this five dollar rate is not an unreasonable rate in and of itself? That is my understanding. Is it yours, Mr. Teal?

Mr. TEAL: Yes, I think I would say that.

Commissioner PROUTY: Mr. Teal says if the five dollar rate had been in effect for the last ten years, he would not ask us to reduce it. It may be they have made a profit. That probably is so; but he does not claim it is an unreasonable rate.

Mr. TEAL: Excuse me a moment on that. The way the Commissioner puts it, I want to make myself clear upon it. I say that the $3.10 rate is a low rate. I do not say it should necessarily pay a five dollar rate. That is, I do not want to be understood of saying that this rate of five dollars, in and of itself would be reasonable.

Commissioner PROUTY: That was the question I asked
124 you.

Mr. TEAL: I do not say that.

Commissioner PROUTY: I asked you whether, if they had maintained in effect for the last ten years this rate of 25 cents a hundred pounds, you would claim that that was so unreasonable that the Commission ought to reduce it.

Mr. TEAL: Yes; I would claim that that would not be a reasonable rate to all these points.

Commissioner PROUTY: That of course introduces a new issue in the case.

Mr. COTTON: Yes; that is what I want to understand.

Mr. TEAL: That is what I would claim.

Mr. COTTON: If your Honors will refer to the map and take into consideration the country, you will see that the Southern Pacific lines very well supply the Willamette Valley with railroads; that running out of Portland towards the west are two roads that make a loop, one starting from what is called South Portland, and running around in the direction of McMinnville, marked in blacker letters, and then swinging around into Portland again. This line right here was the south Portland line. There never was any physical connection with this line (indicating) running from
125 South Portland to the main line of the Southern Pacific except by running around that loop.

Commissioner PROUTY: How far is it around there?

Mr. COTTON: How far is it around the loop, Mr. Miller?

Mr. MILLER: Something over a hundred miles.

Mr. COTTON: We are now building a cut off, but have not yet completed it, so as to get that traffic over to the other side of the river without running it all the way around. Running out from Portland down to Corvallis on the west side of the river, and in that line, for quite a period of time they had no connection except over the Corvallis and Eastern, and the Harriman people have now bought the Corvallis & Eastern, which extends from the sea, over at Newport or Yaquina over to Albany.

Then they had a line which extends, as you will notice, from Woodburn. That is the extreme east side line. It starts at Woodburn and runs down in the direction of Eugene, where we now have a cutoff, taking it over to the main line again. That is the extreme east side line down here (indicating). This line right in the
126 center is the main line of the Southern Pacific.

Then as you will notice there are a whole lot of little spurs on the west side that run off to various points and places, over to Dallas. You see there is another little loop there running around from the other west side line. In fact, I think Mr. Miles operates a mill at Dallas, and you see that is off on another little branch service.

Then one of Mr. Booth's mills is up on the branch, up here at Wendling, on the east side. That is another little branch line service. You can very well see that all of that country north of Albany is well supplied with railroads, as a matter of fact. In fact,

I do not think all those roads would ever have been built by one company, but they ultimately passed, as the result of foreclosures and bankruptcies, and wiping out, into the hands of the Oregon & California Company. They are not well arranged, and require a large amount of branch line service.

Now, there are no mills to speak about on the main line of the Southern Pacific Company in Oregon. The main line of the
127 Southern Pacific, to a great extent, runs down through the Willamette Valley proper, a farming country. Mr. Miles has a mill located at Salem, which is on the main line; but most of the mills, and there are how many in number in the state?

Mr. TEAL: We will show that there are several hundred in the Willamette Valley.

Mr. COTTON: There are several hundred little mills scattered around in the Willamette Valley, and they are scattered mainly on these outside branch lines, and their total shipments from these several hundred mills of all kinds of lumber, rough common and good lumber, to the city of San Francisco does not average much more than about 20 cars a day. The entire movement south, not only to these San Francisco Bay points but to Nevada and Southern California, or any point which is reached by the Ashland gate-way, does not amount to over 20 cars a day, and in order to get those 20 cars a day, they have been gathered up from all these branch lines and collected with other commercial freight,—and that is light, because you can well see that in a territory like that with all these branch line railroads, the development is light—and by performing all of that branch line service and all the collections, as an
128 ultimate result, destined to all points, San Francisco Bay, Sacramento and eastern Nevada, we gather up there in the neighborhood of 20 cars a day, and that is the sum total of the business.

That includes not only this common rough stuff, but all the good lumber which they ship into that territory. We take the position that that rate of five dollars, is, as Mr. Teal I think practically concedes——

Mr. TEAL: No; Mr. Teal does not concede that. Mr. Prouty asked me a question to the effect if the rate had been in effect fourteen years, what I would be here claiming. I do not claim that the five dollar rate is a reasonable rate in and of itself, because the five dollar rate commences from the California state line.

Mr. COTTON: But there is no lumber shipped from the California state line.

Mr. TEAL: We will see where the lumber commences to be shipped.

Mr. COTTON: That is not your quarrel. Your quarrel is up further north. Your quarrel commences up at Coburn.

Mr. TEAL: I have no quarrel with anybody.

129 Mr. COTTON: I mean your kick, the case you are complaining about. I claim that this five dollar rate is a low rate from any point or place in the Willamette Valley where this fir lumber originates and goes to San Francisco. It is not only a reasonable rate, but it is a very low rate.

Commissioner PROUTY: Do you deny, Mr. Cotton, that the rate of $3.10 was established, as Mr. Teal has set forth, for the purpose of encouraging the construction and operation of these mills?

Mr. COTTON: Yes, sir; the mills were there before the rate was made. All this timber was bought, or a great deal of it——

Mr. TEAL: The facts I think will show who is right about that.

Mr. COTTON: We will go into the facts. This rate was never made as the result of any contract. It never was made as the result of any agreement that it should not be changed. It has been changed, as a matter of fact. It has been changed up and back and up and down again. The $3.10 rate covers a haul the aggregate
130 volume of business of which is not over 20 cars a day. It involves the performance of all this branch line service, requiring the climbing of the Siskiyou Mountains, over extremely hard grades, a very difficult road to handle. It involves the carriage of the freight down through Cow Creek Canyon, which washes out periodically, and where the Southern Pacific, as you can see from the evidence, has had to move first to one side and then to the other, to find a place where it could rest comfortably for a while. It is a humpy country, and the $3.10 rate never was in any sense of the word, compensatory. The distance from San Francisco to Portland is how many miles?

Mr. TEAL: 771.

Mr. MILLER: It is 746.

Commissioner COCKRELL: How far is it from Ashland down?

Mr. TEAL: 431 miles.

Mr. COTTON: 431 miles. There is, however, little or no lumber that originates, I may say, in the vicinity of Ashland. The lumber commences farther north, as Mr. Teal said, at Coburg and Albany and Eugene. That is where the fir is.

Mr. TEAL: I think probably 650 miles on the main line
131 would be a fair average haul.

Mr. COTTON: Yes; 650 miles on the main line, at $3.10, over a very mountainous country, extremely hard to operate, 20 cars a day, with all this branch line service, and some three hundred odd miles to gather up 20 cars a day, is the sum total of the business. I simply say that that rate is not a reasonable rate—the five dollar rate.

Mr. DILLARD: There is another point you might call attention to at the same time, which is that the great excess of tonnage is south bound.

Mr. COTTON: I was coming to that. I would not care if the traffic was balanced. If you were even trying to even it up for $3.10, I would not call $3.10 a reasonable rate under those circumstances, or a compensatory rate, and I would not call five dollars a reasonable rate, certainly not an unreasonable rate, taking the freight per ton per mile which this road has necessarily got to get in order to sustain itself. It has been a road, as Mr. Teal says, that has always been down by the heel. It is not a good road.

132 Mr. TEAL: I said it had, prior to this time. I did not say what its earnings had been since the rate went in.

Mr. COTTON: And I do not believe in this whole entire section any one man can say that outside of the main line there is any volume of traffic. There are lots of those branches that operate with one mixed train a day, as you can see from the volume of the lumber traffic we get off of it, and others with one or two passenger trains, at the outside, and on that Corvallis line we run a passenger train through a day, and I guess one freight train more than does the business. On this Woodburn line, the Willamette Valley line that runs around from South Portland, part of the line is gone. The bridge has not been put back there for two years, has it Mr. Booth?

Mr. BOOTH: I do not know Mr. Cotton. That is north of our operations.

Mr. COTTON: And altogether there is nothing in the business even at five dollars.

In addition to that, we are transporting empty cars practically for all of this lumber movement to San Francisco. The reason
133 for that is this. The lumber schooners go down from Portland with loads and there are other vessels going down with loads, because the products of Oregon largely go to California, and as a result of that those schooners go down there and the steamers operating from Portland to San Francisco go down with loads and bring merchandise back. As a result, there is practically no merchandise movement into the Willamette Valley from San Francisco. The competition by ocean, owing to the loading of the lumber schooners and the loading of the regular steamships with potatoes and stuff which originates in the Willamette Valley, is largely south bound. The result is finally that it would appear that for every lumber car that goes south, we practically haul an empty one north. There is one hundred and seventy-four feet maximum grade over the Siskiyou Mountains. We have got to get this stuff from Ashland to the summit, besides other humps and dips all the way through.

I do not think the 316 mills that were operating in the Willamette Valley, which are the complainants in this case, ever went into business on a $3.10 rate or on any representation that that
134 should continue, because the evidence will show that, on the contrary, it was up and down and up and down again.

Opening Statement of W. H. Abel on Behalf of the Intervenor.

Mr. ABEL: If the Commission please, there are one or two facts which I would like to bring to the attention of the Commission on behalf of the intervenors.

Portland produces one-tenth of all the lumber manufactured in the states of Oregon and Washington east or west of the Cascades. The annual output for last year was 643,000,000. The production of lumber in the Willamette Valley is not nearly one-half the Portland production. The $3.10 rate as originally established was for the benefit of Portland and applied only to Portland. A number of the Portland mills were built in reliance upon the continuance of the $3.10 rate.

Commissioner PROUTY: It was only in effect three or four years from Portland?

Mr. ABEL: Yes; that is very true. We shall show that the application of the five dollar rate resulted in a sharp decline in
135 the price of lumber and a considerable loss of profit to the Portland lumber men. About one-third of the Eastern & Western Lumber Company output was shipped from Portland to San Francisco and Bay points on the $3.10 rate, the capacity of the output of the Eastern & Western Lumber Company being one hundred million per annum.

Commissioner COCKRELL: You mean shipped by rail?

Mr. ABEL: Shipped by rail. The magnitude of the Portland interests involved here is actually greater than those of the upper Willamette Valley people.

Mr. COTTON: There is one other thing I want to call your Honors' attention to that I omitted, and that I regard as a very important fact to take into consideration in this situation.

The Willamette Valley mills ship twice as much lumber east via Portland as they do south via Ashland. That is, the same mills that are engaged in this——

Mr. TEAL: So as to be perfectly fair about this Mr. Cotton, which I know you want to be, do you refer to 1906 and 1907?

Mr. COTTON: 1906, our figures are.

136 Mr. DILLARD: 1906, during the California movement.

Mr. TEAL: At the time this car shortage occurred in the Willamette Valley, when you could not even ship your own? I just wanted the Commission to understand when these figures were made up.

Mr. COTTON: We will make them up for any year.

Mr. TEAL: I am going to see if my request has been granted, presently. It will show it.

Mr. COTTON: Now, we make from all that territory a blanket rate. We charge nothing on that eastern lumber shipped from Ashland up to the east. It might well be said that each man is entitled to the advantage of his position. I would concede that, provided he could say that he was being charged an unreasonable rate, it would be your Honors' duty to reduce the rate to Albany, irrespective of what you might think, from a traffic standpoint, would be most advantageous to the railroads and to the people; but if that rate is not unreasonable in itself, then I think you should take into consideration the entire situation, which is this, that if graded rates were made out of that territory both ways, the substantial result would be that the southern mills, for instance Coburg and Eugene would sell
137 to the south and their product would go south. The Portland mills would sell to the east as against these extreme southern mills. Then there would be mills situated at Newburg and Salem, half way in between Portland and Eugene, that would pay a higher rate than Portland to the east, and a higher rate to San Francisco than Eugene; and all that section of the Willamette Valley, in my opinion, would be entirely cut out from any business, either east or west, because they would be so situated that they could

not compete to the south on a graded basis of rates as against the Eugene, Coburg and Wendling mills, and they could not compete to the east as against the Portland mills. I simply refer to that for the reason that graded rates—or, to put my proposition to you again, I think it is your Honors' duty to reduce these rates if they are unreasonable in themselves, but it is not your duty to reduce them if they are not unreasonable in themselves, simply because of the proximity of Eugene to the California territory, in view of the fact that Eugene enjoys a very substantial advantage as a result of having a blanket the other way.

Commissioner PROUTY: I presume the mills themselves would prefer a blanket in all directions. Mr. Teal, there does not seem
138 to be much dispute about the questions in this case. The mills have a rate to the south, and one question is to what extent they are dependent upon that rate for their continued existence. They have a rate to the east. For what reason is not that rate as valuable to them as it is to Portland and other mills, and to what extent is it necessary that this rate should be maintained to San Francisco in order to fairly continue the prosperity of these establishments?

Mr. TEAL: That is where I intend to confine my testimony.

Mr. DILLARD: In order that we may get it in the record,—I do not know that it will be necessary at all—I desire at this time to interpose a special exception and objection to the introduction of any testimony on that line, on the grounds that if the rate is reasonable, the railway company has the right to make it, irrespective of what might be the effect of it; second, that there can be no estoppel upon a railroad from making a reasonable rate, irrespective even of the fact, if it were a fact, that a contract had been entered into that the rate would not be changed; that the matter of making rates must be determined by the conditions as they exist at any given time
139 by the law then in force; that any contract, if there were a contract theretofore made, could have no effect, and that the evidence proposed to be introduced is in all respects irrelevant and immaterial. I presume, of course, the evidence will be admitted, but I want to make the objection at this time in this way, that I may not seem to be interrupting the counsel.

Commissioner PROUTY: The evidence will all be received subject to the objection of Mr. Dillard. Of course in over-ruling the objection and receiving the evidence the Commission expresses no opinion upon the question involved, but that evidence seems to be pertinent to Mr. Teal's claim.

Mr. DILLARD: Yes, sir; I understand.

Commissioner PROUTY: You may proceed, Mr. Teal.

Testimony on Behalf of the Complainants.

LEW ANDERSON, a witness produced on behalf of the complainants, being duly sworn, testified as follows:

Mr. TEAL: Mr. Anderson, what is your occupation?

140 Mr. ANDERSON: I am engaged with the Oregon & Washington Lumber Manufacturers' Association as rate clerk.

Mr. TEAL: Have you had a large experience in the matter of examining rates and tariffs?

Mr. ANDERSON: I have been engaged in that work in one way and another for a dozen years or so.

Mr. TEAL: Have you prepared a history of the rate on lumber from various points on the Southern Pacific Company lines in Oregon to various points in California covering this controversy?

Mr. ANDERSON: I have prepared such a statement.

Mr. TEAL: From the tariffs on file with the Interstate Commerce Commission?

Mr. ANDERSON: From the tariffs with the Interstate Commerce Commission.

Mr. TEAL: Is this a correct statement of that?

Mr. ANDERSON: Yes, sir; this is the statement I prepared, and it has been very carefully gone over by me.

Mr. TEAL: It shows the history of the rates from what year?

Mr. ANDERSON: From the year 1899.

141 Mr. TEAL: To when?

Mr. ANDERSON: To the present time.

Mr. TEAL: I would like to offer that as "Anderson Exhibit 1."

Commissioner PROUTY: That may be marked as "Exhibit 1," and will be admitted.

(The paper referred to was received in evidence and marked "Anderson Exhibit 1.")

Mr. TEAL: Mr. Anderson, did you prepare that map?

Mr. ANDERSON: That is my work.

Mr. TEAL: From the tariffs?

Mr. ANDERSON: From the tariffs; yes, sir.

Mr. TEAL: And the key on the side there substantially explains the situation, does it not?

Mr. ANDERSON: That is a full explanation of the colorings and letters.

Mr. TEAL: I will not take the time——

Commissioner PROUTY: That may also be admitted. Do you desire it marked as an exhibit?

Mr. TEAL: Yes; as Exhibit 2.

(The map referred to was received in evidence and marked "Anderson Exhibit 2.")

142 Commissioner PROUTY: The other side should be furnished with a copy of the statement of Mr. Anderson, because they desire to check up those rates.

Mr. TEAL: I have one here. We can use it together.

Mr. COTTON: We will borrow the exhibit during the noon hour and check it up, your Honor.

Mr. TEAL: That is all I wish to ask Mr. Anderson.

Mr. COTTON: I will not cross examine Mr. Anderson.

Commissioner PROUTY: You are excused, Mr. Anderson, but you will remain here so that the defendants may cross examine you during the day, if they desire.

R. A. BOOTH, a witness produced on behalf of the complainants, being duly sworn, testified as follows:

Mr. TEAL: Where do you reside, Mr. Booth?
Mr. BOOTH: At Eugene, Oregon.
Mr. TEAL: State your occupation, and what it has been for a number of years past.
Mr. BOOTH: I have been engaged in the lumbering business principally for a good many years. I am interested in lumber plants at this time.
143 Mr. TEAL: Where?
Mr. BOOTH: In Lane County, Oregon, with the Booth-Kelly Lumber Company.
Mr. TEAL: Is that the Willamette Valley District?
Mr. BOOTH: In the upper Willamette Valley district.
Commissioner PROUTY: By the "upper," you mean what?
Mr. BOOTH: The southern.
Mr. TEAL: The river runs north, so we call it up out there.
Commissioner PROUTY: Yes.
Mr. TEAL: You are reasonably familiar with the conditions surrounding the lumber industry in the Willamette Valley are you not, Mr. Booth?
Mr. BOOTH: I am.
Mr. TEAL: How many mills have you built there?
Mr. BOOTH: Four.
Mr. TEAL: And what is their capacity?
Mr. BOOTH: Well, thirty thousand or more feet per hour. I think it is rather more than thirty thousand.
Mr. TEAL: What was your output in 1906 of these mills?
144 Mr. BOOTH: Do you mean the amount shipped or the total amount?
Mr. TEAL: I would like to know what the cut was and what was shipped. I will get through this pretty fast.
Mr. BOOTH: I think we disposed of about 82,000,000 feet. We shipped 79,000,000.
Mr. TEAL: About 3900 car loads in 1906?
Mr. BOOTH: I will have that in a moment.
Mr. COTTON: You shipped about how much?
Mr. BOOTH: In 1906, 79,000,000 plus. We disposed of 82,123,196 feet.
Mr. TEAL: About how many car loads, Mr. Booth?
Mr. BOOTH: I have that in car loads. 3900 cars in 1906.
Mr. TEAL: Can you state how many car loads you have shipped in 1907?
Mr. BOOTH: For the first ten months, 2248.
Mr. TEAL: What are the shipping facilities for your mills?
Mr. BOOTH: The lines of the Southern Pacific Company.
Mr. TEAL: You have no water facilities at all?
145 Mr. BOOTH: No water.
Mr. TEAL: Where is the output of your mills sold, Mr. Booth, or where has it been sold for the last few years principally?

Mr. BOOTH: I have it here in car loads from 1901 to and including the first ten months of this year.

Mr. TEAL: I wish you would just read that in the record.

Mr. BOOTH: In 1901, shipped east, three hundred and sixty-eight cars; south, thirty-four hundred and thirty-eight.

In 1902, twelve hundred and ninety-five east; thir*yt*-two hundred and thirty-one south.

In 1903, eight hundred and thirty-one east, twenty-four hundred and forty south.

In 1904 six hundred and seventy-one east, twenty-six hundred and seventy-six south.

In 1905, thirteen hundred and twenty-five east, two thousand and eighty-three south.

In 1906, sixteen hundred and seventy-five east, twenty-two hundred and twenty-five south.

In the first ten months of 1907, eleven hundred and twenty-nine east, eleven hundred and nineteen south.

146 Mr. TEAL: What was the cause of the falling off of your southern shipments there, Mr. Booth, if you know?

Mr. BOOTH: Lack of transportation facilities.

Mr. TEAL: You had the orders, did you not, for that section?

Mr. BOOTH: Yes, sir.

Mr. TEAL: Mr. Booth, has your company gone to any expense in maintaining an office in San Francisco for the sale of lumber?

Mr. BOOTH: Yes, sir.

Mr. TEAL: You have maintained one there regularly in the past, have you not?

Mr. BOOTH: Not during all the time, but during the past several years?

Commissioner PROUTY: Can you tell me what part of your lumber shipped south has gone on the $3.10 rate and what part has paid a higher rate?

Mr. BOOTH: No, sir; I can't tell that exactly.

Commissioner PROUTY: Can you give an approximation?

Mr. BOOTH: From 15 to 20 per cent. has gone on the $3.10 rate.

147 Our shipments have at times been about equal in each direction. If the statement is correct that seven thousand cars have been shipped south, then we alone have shipped a little in excess of the entire amount that has gone south.

Commissioner PROUTY: I mean of your southern shipments, what part has gone on the $3.10 rate. You say 15 to 20 per cent.?

Mr. BOOTH: I mean of the whole.

Commissioner PROUTY: Of your shipments south, what part has gone on the $3.10 rate and what part on a higher rate?

Mr. DILLARD: Do you mean of the present year, your Honor?

Commissioner PROUTY: No; take the periods covered by his statement.

Mr. BOOTH: I cannot say definitely, because I have not that information. I will simply have to estimate.

Mr. TEAL: What would be your estimate, Mr. Booth?

Mr. BOOTH: I think between 15 and 20 per cent. Perhaps 15

per cent. of it, I would say. No; I beg your pardon. You asked——

Commissioner PROUTY: For your southern shipments?

148 Mr. TEAL: What part of your shipments into California took the $3.10 rate?

Mr. BOOTH: Yes; I understand what you mean. I will say half of it.

Commissioner PROUTY: What part of it has ever paid the $5 rate?

Mr. BOOTH: The remaining half.

Mr. TEAL: It could not be that.

Mr. BOOTH: No; the other points we reach in California. Of course part of our shipments to the Bay points where the $3.10 rate applies on a certain class of lumber, are also $5, which in effect has made the average rate we pay to that point $3.68. We ship to other points in California where the rate is from $5 to say $8.75 per ton. Would that answer the question?

Commissioner PROUTY: At the present time the rates upon all grades of lumber to San Francisco Bay are $5, as I understand it?

Mr. BOOTH: Yes, sir.

Commissioner PROUTY: There is no higher rate on the higher grade of lumber?

149 Mr. BOOTH: Not now. There was a higher rate when the $3 10 was re-established.

Commissioner PROUTY: So this advance applies really to something over one-half of the lumber that you ship south?

Mr. BOOTH: Approximately one-half. That is my judgment now.

Commissioner PROUTY: The balance would not be affected at all by the advance?

Mr. BOOTH: Well, I don't know what influence there might be, of course. The base rate shipping from other points not far removed——

Commissioner PROUTY: That is my question exactly. It seems in the past you had a rate of $3.10 to San Francisco.

Mr. BOOTH: And that was the basic rate.

Commissioner PROUTY: That was the base rate. When you shipped out from San Francisco, you paid the local out until you reached a point which came to $5.

Mr. BOOTH: That is right.

Commissioner PROUTY: Now, Mr. Teal stated that at the present time the $5 rate applied to all that territory, so that you pay

150 no local out from San Francisco. In other words, if you take the most distant point which you could previously reach at a $5 rate, you reach that point now for $5?

Mr. BOOTH: Yes, sir.

Commissioner PROUTY: You so understand it?

Mr. BOOTH: Yes, sir; but our position is this, that if the $3.10 rate is restored to us, it will be restored as a basing rate. That is our position.

Commissioner PROUTY: I understand, but what I am trying to get at is just how much of your shipments this advance affects, and I judge by your answer that it affects about one-half of your shipments south.

Mr. BOOTH: I think that is approximately true.

Mr. TEAL: Now Mr. Booth, you were closely connected were you not with the development of the lumber business in the Willamette Valley?

Mr. BOOTH: I think we were the first, and so far as I know we were the first, of the interior mills to do an interstate business. Prior to 1898——

Commissioner PROUTY: When did you go into the Willamette Valley Mr. Booth?

151 Mr. BOOTH: We looked over the situation first in July 1896. We commenced work in 1897, in the localities where we now are.

Mr. TEAL: Prior to the understanding which you will hereafter relate in reference to this rate, and prior to the putting in effect of this rate, what was the condition of the lumber industry in the Willamette Valley, if there was any there? Just state the facts.

Mr. BOOTH: It was merely, I think, wholly for local consumption. There was no interstate business. There were no shipments out. There was very little business done. The population then was very much less than now, and the local demand was less than now.

Mr. TEAL: The mills that were in the valley then were simply in the Willamette Valley proper, and not affected by this rate. They were simply engaged in filling local requirements, were they not?

Mr. BOOTH: Yes, sir.

Commissioner PROUTY: When was this blanket rate to the east first put in, Mr. Booth?

Mr. BOOTH: I don't think I can answer that.

Commissioner PROUTY: Does anybody know when the Portland rate was extended south to the Willamette Valley?

152 Mr. COTTON: In 1901, by way of Portland, after the Harriman merger.

Mr. BOOTH: Of course prior to that time, your Honor we had rates into Ogden and Salt Lake and the Colorado territory via Sacramento.

Mr. TEAL: What became of those rates?

Mr. BOOTH: We are not allowed to ship that way now. Our shipments go by Portland.

Mr. TEAL: We will refer to that later to show how this territory has been cut off. Now, will you please give the history of the development of the lumber business there in the Willamette Valley, Mr. Booth? Commence right at the beginning of it and state what it was.

Mr. BOOTH: So far as it relates to our sales—and I would prefer to confine it to that unless I am asked other questions—prior to the time named, I and others who are now associated with me were operating in the southern part of the state, in soft pine lumber, located at Grant's Pass.

In 1896 Mr. J. I. Jones brought us a letter of introduction from the railroad people, asking us to look over his plant; that he
153 was then attempting to operate or getting ready to operate at Saginaw. We declined at first to look the plant over, but upon a second similar request we looked into the proposition, and after doing so we conferred with the purchasing agent in Oregon and

the manager of the Oregon line, and finally made a lease of what is known as the Saginaw plant for 12 months for the purpose of seeing what we could do in the way of handling fir, going into the market and learning its quality and what might be done with it. We eventually, and about a year later, purchased that plant. We became convinced that the fir product was a good commercial product in lumber, and desired to increase our operations.

Mr. TEAL: Excuse me right there. Prior to that time this Willamette Valley fir was not considered a very substantial asset as a commercial product, was it?

Mr. BOOTH: No, sir; it was not. We had not operated in fir prior to that, and hence knew very little about it. We were cautioned at first by the railroad people——

Mr. TEAL: Who?

Mr. BOOTH: Mr. Coler.

154 Mr. TEAL: Who was he?

Mr. BOOTH: He was the manager of the Oregon line—saying that we perhaps could not reach a very extended market with the product, but they were anxious to know what it was; that it was good tie material for certain square timbers for the use of railroad construction, but he doubted whether it would go into commercial uses, where the better grades were used. It had been their practice to confine their purchases of the high grade material very

155 largely to Puget Sound and points north; but, believing that it was a fair competitor, grade for grade, we desired to increase our operations, and we went again to the railroad company, both in Oregon and in San Francisco.

Mr. TEAL: This was then controlled from San Francisco. It was then a Huntington line, was it not?

Mr. BOOTH: It was then a Huntington line. Mr. C. P. Huntington was the main force. Receiving encouragement, we leased then in 1898 the Coburg mill, with the privilege of buying within 12 months' time. We took over the option. That gave us a greater output and a further test. The business seemed to be desirable to us and to the railroad company, and, desiring to further extend our operations, we then increased our capital very materially, for the purpose of purchasing the timber body.

Mr. TEAL: At this time, in 1898, what was said about the rate?

Mr. BOOTH: It was being discussed then as to whether we would be permitted to go into the California Bay points on the competitive basis with water. We have volumes of letters on that, bearing

156 that date, and we had numerous interviews, myself and other members of our company; and it was understood as early as 1898 that it would be a satisfactory rate, and that it would eventually be given.

We then entered into negotiations for a body of timber about, say, 20 miles from the ocean on the main line, on the Mohawk basin. In doing that, the railroad people said to us that they would not sell us the timber unless we would agree to manufacture it; that they had not considered up to that time that their timber was very much of an

asset, and that it was the tonnage that they desired, and not the purchase price of the timber. They gave us several illustrations.

Mr. DILLARD: If your Honor please,—all right; go ahead. I was going to suggest that you gave the names of the people who made that statement.

Mr. TEAL: We can give the names. Give the names, Mr. Booth, of those you were talking to.

Mr. BOOTH: Later I will, and maybe it will be a little more specific.

Mr. TEAL: Go ahead and tell all the facts about it.

Mr. BOOTH: They gave us several instances as to how their
157 business was affected in this way, instances where timber had been sold for $20 an acre and the freight charges had been more than $2,000. We negotiated with [illegible] for a body of timber, with Mr. William H. Mills, who was the [illegible]ent and a director. It was he who made the statement first——

Mr. TEAL: A director of what?

Mr. BOOTH: Of the Southern Pacific Company. It was he who made the statement first that they would not sell us the timber without an agreement or understanding that we would manufacture; that it was their purpose to develop that territory in all ways that they could.

To be brief in the statement, he introduced us to Mr. C. P. Huntington. We had an understanding with him as to the quantity of timber, the location and the price, but the contract was not entered into with us until another agreement was also reached as to what the rates would be, and where the mills should be located, and the construction of a road from the Woodburn-Natron Branch to the plant we desired to locate, at a place later called Wendling, which was at the margin of the timber body to which I refer.

158 These agreements or understandings were made simultaneously.

Mr. COTTON: Were they in writing or not?

Mr. BOOTH: They were covered by a letter. We had no written contracts with them.

Mr. COTTON: Have you the letter?

Mr. BOOTH: I have not.

Mr. COTTON: Have you got it in your files?

Mr. BOOTH: I have it, I think, at home.

Mr. COTTON: All right; we would like to have a copy of it sent to the Commission.

Mr. BOOTH: The letter refers to the amount of business—I can give you substantially what the letter is. I think, however, that your Company have it also, because I have seen the letter in their hands since. The letter refers to the construction of this road and the amount of business that we would give them. We agreed to aid in the construction of the road to the extent of furnishing the ties and the right of way and to ship over the line, of forest products, during the first year, not less than 2500 cars, and to pay a local charge of 50 cents per thousand feet; that thereafter the market and other con-

ditions should govern what we did as to the rates. In con-
159 nection with that, this branch was built——

Mr. COTTON: I would like to have it understood that a copy of that letter is to be sent to the Commission by Mr. Booth.

Mr. TEAL: You have asked for it, and it will be done. You have one yourself. There is very little trouble about getting it.

Commissioner PROUTY: You can furnish a copy, can you, Mr. Booth?

Mr. BOOTH: I think I can. I will very cheerfully furnish anything the Commission desires.

Mr. TEAL: Anything we have, the Commission can have. This Wendling branch is one that Mr. Cotton referred to in his opening.

Mr. BOOTH: Yes sir.

Mr. TEAL: You did build the mill there?

Mr. BOOTH: We did.

Mr. TEAL: You did furnish the right of way?

Mr. BOOTH: We did.

Mr. TEAL: You did furnish the ties?

Mr. BOOTH: We did.

Mr. TEAL: You did pay the extra amount for shipping over the branch at that time?

160 Mr. BOOTH: There was some contention about that rate it was discussed at some length with the people at Portland, the local officials who stated they intended to make it a 50 cents per ton instead of a 50 cents per thousand feet rate. The result was that a 40 cent per ton rate was put in, which means about 40 cents on certain grades, and say 65 as a maximum. We substantially complied with that. Of course the rate was a little more than we had intended, but there is no complaint of that.

Mr. TEAL: Over that branch you paid this local, did you not?

Mr. BOOTH: We did.

Mr. TEAL: And have, all the time?

Mr. BOOTH: No sir, the rate has been reduced on that to 25 cents a ton.

Mr. TEAL: But you paid a local over that branch?

Mr. BOOTH: Yes sir; at all times.

Mr. TEAL: In addition to the regular rate?

Mr. BOOTH: Yes sir.

Mr. TEAL: Just go on now, Mr. Booth.

Mr. BOOTH: We later increased our output by building a mill at Springfield. We intended, after that was done, to make an
161 additional increase and to concentrate our operations to some extent, and we bought a site at Harrisburg, below the junction of the principal prongs of the Willamete Valley.

Mr. TEAL: Was the $3.10 rate put in that we were talking about?

Mr. BOOTH: Yes sir.

Mr. TEAL: That was in 1889, was it?

Mr. BOOTH: That is my recollection.

Mr. TEAL: That explains why it was applied first to Wendling and Saginaw and these places. How many places did it apply to in the Willamette Valley?

Mr. BOOTH: It applied first on the main line to Saginaw, and after we commenced operating the Coburg mill, which is on another line, and what was then a branch line, but which has since been connected at a point south of the main line, it was applied to Coburg and as we developed the other shipping points, it was in turn applied to them.

Mr. TEAL: Just go on, Mr. Booth.

Mr. BOOTH: We increased our output, as shown by the figures that have been presented. At times we have had a good
162 deal of trouble. In fact, nearly all of the while, with car shortage. The discussion of that has brought us in contact with the superior officers of the company a number of times.

I want to say this, however, as to our markets earlier. We had what was considered, and was, I think, in fact, an extremely low cost line in our earlier years. Our relation was extremely cordial with the Southern Pacific people, as far as we would comply we sought the markets that they desired.

Early they asked us to develop a trade in Arizona, in the mining business, that was then competitive with the Santa Fe. A large amount of our early business went into that territory on, say, an $11 per ton rate. We continued to cultivate that territory until the rate was withdrawn, in the general adjustment of the traffic situation, and rates were established more to the satisfaction of the lumber men and the Southern California people.

We were then asked to develop a business in the mining regions of interior California, known as the mother lode country, and we were given special rates to that territory. I mean we had low
163 rates for the purpose of developing a trade there as against the local product that gave no rail haul. We had a very extensive business in there in proportion to our output, and in proportion to the amount that went into that territory, until the business was well advertised to all of our competitors and the rate was gradually extended. We have some business there still.

We were told repeatedly, after the rates were so adjusted, that it was desirable to their people that our eastern business should go via Portland; that they preferred that that territory should be developed because of their ability to place cars better because they could draw large supplies from connecting interstate lines; I mean lines that were interested in getting the tonnage, and that, in addition to their own equipment, would enable them to better accommodate us. That we did, and have continued to do, and it accounts to some extent for our increased eastern shipments.

Now, about the disturbing of the rates. They were taken off, and when they were first taken out, that caused——

Mr. TEAL: What rate was that?

164 Mr. BOOTH: The $3.10 rate.

Mr. TEAL: What date: January 1st, 1903 or 1904, was it?

Mr. BOOTH: I think that is the time.

Mr. TEAL: 1904.

Commissioner PROUTY: In the fall of 1903?

Mr. BOOTH: Yes; it was taken out January 1st, is my memoran-

dum. That caused a practical shut down of our business, and quite a good deal of discussion about this.

Commissioner COCKRELL: What was that rate?

Mr. BOOTH: $3.10. It was when the $3.10 rate was taken out.

Commissioner COCKRELL: What rate was put in?

Mr. BOOTH: $5, and I think for a time—well, $5 was our rate.

Mr. TEAL: Prior to that time this $3.10 applied to all lumber, did it not?

Mr. BOOTH: It applied to all lumber.

Mr. TEAL: I want the Commission to understand that—prior to January 1st.

Mr. BOOTH: All lumber that was shipped to Bay points.

165 Mr. TEAL: Now, just go on, Mr. Booth. You were speaking about the effect of this change.

Mr. BOOTH: It caused a shut down of our mills, and others, and quite an accumulation of material that we had to work of- gradually; and after testing it as well as I could, I represented to our directors that it would put us out of business, and it would be necessary for us to either quit operating entirely or perhaps confine our operations to one mill.

Our President, Mr. Buck, took the matter up actively with the San Francisco officials, with Mr. Sproll, and Mr. Stubbs, and considerable correspondence followed, and finally a visit of those gentlemen, accompanied by Mr. Coleman, who handled the matters in Oregon, to the Willamette Valley. They visited our plants, I think all of them. They were practically shut down, as I have stated, and quite a long conference followed.

Mr. Stubbs position was this. He said that at all times it was his view that it was a bad thing to put in the rate, in the first place; that the Oregon lumber on their lines should have waited until the forests at other places were more nearly depleted, so that the lumber to the various points might furnish a better freight rate

166 and enrich the state more, because the stumpage would be worth more; but that inasmuch as the rate had been put in and the business developed on it, he supposed they were in for the rate, but that he wanted to make such adjustments of it as he could that would be satisfactory to the lumber men, and give the best results to them. He wanted to know if it would be satisfactory if this should apply only to green common rough lumber, and after defining what that should apply to and what the term should mean, that there should be no misunderstanding about it, he stated that it would; that all the higher grades of lumber should take a higher rate, and that the common lumber, if dried, should take a higher rate.

He asked us if we would agree if the rate was maintained to continuously operate our mills, and referred especially to the one at Wendling, that was then shut down. At that time we were in the Wendling mill. I told him we would undertake to do so. He said he would reestablish the rate, and later he did.

Mr. TEAL: On May 10, 1904 the rate was put back in?

Mr. BOOTH: Yes sir.

167 Mr. TEAL: Just go on and tell it from then on down.

Mr. BOOTH: Of course we opened all our mills and continued the operations and developed them, as shown by the amounts that have been shipped. I presumed, and so reported to our directors, that that would fix for all time the rate; at least while the present conditions prevailed, and I suggested that we undertake the increasing of our output as originally contemplated by the purchase of the property at Harrisburg.

After a time, there was talk of withdrawing this. I mean some years afterwards, in the early part of the present year. The only conference I had with reference to the $3.10 rate since that was after it was generally understood that the rate was to be taken out. Mr. Lounsbury, the traveling freight agent—I am not sure that that is his title, but he travels from the freight department, and at that time was under the direction of Mr. Coleman—came to our office in June and stated he wanted to discuss the matter, that he had been requested to do so by Mr. Coleman. He said there appeared to be no longer any justification of the $3.10 rate, because the ton-

168 nage rates were very much higher than they were at the time it was put in.

Mr. TEAL: You mean the charter rates?

Mr. BOOTH: The charter rates. I said to him that we would be perfectly willing to follow the charter rates, if that was what they intended. I asked him if it was, but he said——

Commissioner COCKRELL: You mean the charter rates by water?

Mr. BOOTH: By water, from Portland. You understand, the $3.10 rate, while we are not located on water, our competitors are mills that are on water for the San Francisco trade. That was the basis of this rate being made for us. I had a little talk with him. I told him the effect it had on us before, and he simply said that they had decided to withdraw the $3.10 rate and put in the $5 rate. I said to him "Then if it is a thing that is definitely settled, there is no use to waste our time in discussing it," and he withdrew.

Mr. TEAL: And this rate was put in finally, and made effective on April 18, 1907?

169 Mr. BOOTH: That is correct.

Mr. TEAL: I wish you would state to the Commission what effect the change of this rate to San Francisco and Bay points has upon your business and others similarly situated in the Willamette Valley, and the reason I would like to have the Commission understand that is because it is a local situation, and is rather peculiar.

Mr. BOOTH: If we were doing a very little business, a small business, the rate would not make any great difference, so far as the community was concerned. The development of the lumber business affects the entire community. Do you want me to refer now to the community or our business?

Mr. TEAL: I want the effect on the lumber business. What I wanted the Commission to understand was why the change of this rate into the San Francisco Bay points affects the lumber business, and how it affects it.

Mr. BOOTH: I stated before, I believed our lumber was a fair competitor for other fair lumber, grade for grade. I mean by that a common stick of our lumber is as good as a common stick of our competitors' lumber, and the same is true of high grade lum-
170 ber, flooring and intermediate grades; but the percentage of the high grade lumber that we get or that can be obtained, so far as any demonstration is concerned that has already been made, is very much less than that of the Columbia River or other points north. For instance, 70 per cent. of our lumber, or more, is merchantable, or No. 1 common grade, which is generally used interchangeably, and of grades of less value. The San Francisco and California markets have used two grades of lumber in the common, one No. 1 common, and the other No. 2 common, and of course we conform to that.

Commissioner PROUTY: Mr. Poulsen testified that of his cut at Portland, about 70 per cent. was common, as I remember it. Do you understand that his grades are the same as yours?

Mr. BOOTH: Mr. Poulsen, I understand, has a less percentage of commons than the average mills of Portland.

Mr. TEAL: You mean a less percentage of even grades?

Mr. BOOTH: A less percentage of even grades.

Mr. TEAL: That is the fact?

Mr. BOOTH: That is my understanding.

Commissioner PROUTY: Proceed, Mr. Booth.

171 Mr. BOOTH: Interior California takes a high grade of common lumber, and has at all times during my experience in the lumber business. San Francisco takes a low grade of common lumber, and it is to that point, almost wholly, with the exception of certain traffic in mining timbers that we have shipped our No. 2 common lumber. More than half of our common lumber is No. 2, but, to be conservative, say half of our No. 2 common lumber, and it is must find that or a kindred market. It cannot go into any other.

Mr. TEAL: Is there any other market for it that you know of?

Mr. BOOTH: There is no other market that we can reach except as I say, some of it is put into mining timber, and we have been compelled to send some of it in that way to markets that were not remunerative, but that must be done, of course, to run the business.

Commissioner PROUTY: What can you afford to sell that No. 2 common for at your mill?

Mr. BOOTH: The average cost of our lumber last year, which was the highest of any year, was $8.94, exclusive of fixed charges, which made the toal $9.97.

172 Mr. COTTON: You mean $10.97, including depreciation, interest, insurance and all those items. You said $9.97. You are $1 shy.

Mr. BOOTH: Yes sir.

Commissioner PROUTY: But that does not include stumpage?

Mr. BOOTH: That includes stumpage.

Mr. TEAL: 50 cents.

Mr. BOOTH: We charge our stumpage at 50 cents. We have done

that up to the present time. Nearly three fourths of our lumber, 70 per cent. or more, is of the common grades. We must get cost out of it. If we do not get cost out of it there will be no profit of any consequence. Do you desire to know the range of prices at which it has been sold?

Commissioner PROUTY: Yes.

Mr. BOOTH: Shall I submit a memorandum of prices showing the prices at which it has been sold?

Commissioner PROUTY: Yes; you might do that.

Mr. DILLARD: If it is short, read it into the record.

Mr. TEAL: Is this No. 1 common or No. 2 common, Mr. Booth? Let us know when you read the prices.

173 Mr. BOOTH: If you want to refer to the prices generally, it includes a number of different kinds of material we had here. I think I can give you the facts, though, so that it will be satisfactory.

Mr. COTTON: Let him make a statement and have it copied into the record.

Mr. TEAL: No; let Mr. Booth state it if he can.

Mr. BOOTH: I remember that when we commenced we had to assume contracts that were taken for even $5 and $6 per thousand feet. It was a small plant, situated in the timber, under favorable conditions, and we commenced in 1897 selling lumber at $6 and $6.50 as the lowest price for our lumber. That furnished us a profit at that time, but the cost has increased, as shown by my testimony.

Mr. TEAL: Could you give us some idea of what the prices of common lumber would be at the mills, during 1905, 1906 and 1907. 1906 and 1907 are hardly years to go by in the lumber business.

Mr. BOOTH: I can give the prices at which we sold ties, for instance, or at which we sold other items in 1905. We sold ties for $8.50.

174 Mr. TEAL: I would like to ask you there if the common lumber does not sell for less than the ties,—No. 2 common?

Mr. BOOTH: The tie is made up from No. 1 and No. 2 common lumber. Of course the No. 2 grade is the lowest grade of lumber we handle, except that which is inferior, and might be classed as culls; but I haven't any price to show——

Commissioner PROUTY: I do not think it is worth while to spend much time on these prices. Mr. Booth testifies that he needs this San Francisco market in which to dispose of his No. 2 common lumber. Now, the other side may interrogate him on cross examination.

Mr. TEAL: Yes. I simply wanted to bring out also from Mr. Booth that without that market there would be a certain effect on his operations. I do not care to go into detail. I simply want him to state the ultimate facts, and they can examine him on that; only I want the Commission to understand the condition there, and what has always been the effect.

Mr. BOOTH: I can answer that better by what it has been.

175 It shut us down before. There is no question about that. When the rate was changed this time we had to fill some

orders that were taken on the old rate, and by reason of that we made a loss of between $800 and $900, but we were successful in getting the most of our orders that were placed on that cancelled, a quantity of more than 11,000,000 feet.

Mr. TEAL: That is, after this rate was changed you had succeeded in having cancelled orders amounting to 11,000,000 feet?

Mr. BOOTH: At the time the rate was changed, we had orders for more than 11,000,000, that we succeeded in getting cancelled, some at our solicitation and some where they were bought on f. o. b. mill arbitrarily by the purchaser. Some of them of course were not, and we had to make good.

Mr. TEAL: Those orders could have been filled at a profit if the rate had been continued and you had been furnished cars, could them not?

Mr. BOOTH: They were desirable.

Mr. TEAL: What is the difference per thousand feet on this $3.10 and $5. rate.

Mr. BOOTH: The $3.10 rate is approximately $5.25. The
176 $5 rate is $8.33. The $3.10 rate is $5.17, to be exact.

Commissioner PROUTY: The $3.10 is equivalent to $5.17?

Mr. BOOTH: $5.17 per thousand feet, and the $5 rate $8.33.

Commissioner PROUTY: Does that apply on rough lumber or on your entire cut?

Mr. BOOTH: Under what conditions do you mean did it apply?

Commissioner PROUTY: I understand the rate only applied on rough lumber.

Mr. BOOTH: Under the readjustment of things, it applied only to green common lumber.

Commissioner PROUTY: And the differences you state are the differences as applied to that kind of lumber?

Mr. BOOTH: That is right.

Commissioner COCKRELL: $5 would amount to how much per thousand?

Mr. BOOTH: $8.33 on green common lumber.

Mr. TEAL: In other words, on the very lowest class of
177 products you produce, the advance was over 60 per cent., was it not?

Mr. BOOTH: Yes sir.

Mr. TEAL: Ties are made up of what are supposed to be common lumber, are they not?

Mr. BOOTH: They are made of common lumber.

Mr. TEAL: When this rate was first put into effect, was it supposed to apply to ties or not?

Mr. BOOTH: Yes sir; and it did apply to them. It was made to apply to them. That was the practice, but later there was a distinction made. We discovered that last year.

Mr. TEAL: How did you happen to discover it?

Mr. BOOTH: Well, we had sold quite large quantities of lumber to San Francisco people, the Western Pacific.

Mr. TEAL: The Western Pacific Railroad?

Mr. BOOTH: The Western Pacific Railroad. After we had shipped

a large quantity of them, we found out that they would not apply this rate to ties. They made a distinction, and we lost quite heavily by that.

Mr. TEAL: So as a matter of fact the rate simply is limited closely to this common rough green lumber that goes to the San
178 Francisco market, and the laths, I guess it is.

Mr. BOOTH: That is right.

Mr. TEAL: What was the effect at the mill yards upon the shipment of this rough common lumber that otherwise would have gone to San Francisco. Did you have to pile up any lumber, or do anything about that, that otherwise would have gone?

Mr. BOOTH: Of course it would be hard for me to distinguish the difference between the effect of the $3.10 rate and the lack of cars. We have now, say, 35,000,000 feet of lumber piled up on our yard. If that rate had not been taken off and an adequate supply of cars had been furnished, we would have had no more than the normal, which is about half that amount. In other words, I mean to say that we had orders upon which we could have moved it and would have moved it if the rate had not been disturbed and the cars had been furnished. Of course the effect is that we not only have the lumber on hand, but it is depreciating in value, and we will have very material losses.

Mr. TEAL: The mills in the Valley cannot get into Idaho with this lumber at all, can they?

179 Mr. BOOTH: They cannot.

Mr. TEAL: So that as to this common grade that goes to San Francisco, they cannot ship it to Colorado and Utah?

Mr. BOOTH: No sir; not the No. 2 lumber. I say, we have forced some of it into that market, and will continue to do so to some extent, no doubt, but it is of little consequence and would not make the volume that we have.

Mr. TEAL: Of course I suppose you could put a price that would move it some way or other?

Mr. BOOTH: Well, the demand for it is very much less there than it is in the other markets. They do not call for that class. I don't mean they would not take it at some price, but at no price that we could afford.

Mr. TEAL: Since that rate has gone into effect, will you state to the Commission what orders you have received from San Francisco for lumber of those grades?

Mr. BOOTH: None, I think, at all. I think we have moved possibly half a dozen carloads, but practically nothing. It has had the effect of shutting us out, absolutely.

180 Mr. TEAL: So that it simply closes that market to you?

Mr. BOOTH: It does.

Mr. TEAL: And it is that rate that does it, Mr. Booth? You are prepared to state that to the Commission?

Mr. BOOTH: I am.

Mr. TEAL: Now, can you give the range of charters during this period to the Commission, from say Portland?

Mr. BOOTH: At the time of the discussion of the $3.10 rate first with us, the charters were $4.

Mr. TEAL: Per thousand feet, you mean, do you not?

Mr. BOOTH: Per thousand feet, the charters were based on.

Mr. TEAL: I would ask the Commission to keep that distinction in mind, because when we speak of charters, we are speaking of a thousand feet, 3300 pounds.

Commissioner PROUTY: Does the charter take the lumber on the dock?

Mr. TEAL: Mr. Buehner can answer that.

181 Commissioner PROUTY: Never mind. Proceed.

Mr. BOOTH: That at times has been as low as $3.50. Whether it has been lower or not, I don't know. It reached the highest point after the San Francisco disaster, in May, I think. The highest I have any knowledge of was $9.50.

Mr. TEAL: That was about January, 1907, was it not?

Mr. BOOTH: I think the highest point was possibly at that time, and a little later it ran lower.

Mr. TEAL: Then what was the course of the charters?

Mr. BOOTH: They were downward, rapidly, until now they are $4.25 to $4.75. That is my understanding.

Mr. TEAL: Back to the original amount, or about the original amount?

Mr. BOOTH: About.

Mr. TEAL: In the Willamette Valley proper, I wish you would state to the Commission what the direct result of the establishment of this industry was in the development of business, and its character in the Willamette Valley, from your own knowledge.

Mr. BOOTH: Well, take our territory. I think our terri-

182 tory, perhaps, has been stimulated more than the average, because the product of our mills, perhaps is greater than any other one interior point. Our business centers around Eugene. That is the county seat of Lane county. It is a town that would be affected very materially by the lumber business, because it is surrounded on three sides by forests. When we commenced, the population was supposed to be 2800, say 3,000. It is two and a half times that now. It receives the full impulse, and is directly benefitted by our operations. Our pay rolls are met at that point, very largely.

Springfield is three miles from Eugene. That is where our last mill was built. At the time that mill was built there were, say, half a dozen families there, maybe a hundred people. I don't think in excess of that. It has 1500 now. The growth has been on account almost wholly, if not entirely so, to the erection of a large plant there. Wendling is in the edge of the forest. It is the terminus of the branch line to which reference has been made. There was one family there when we commenced operation, from whom we purchased some land for a mill site. We have restricted the

183 growth of that town in some ways, but there have been from 250 to 400 people there, and it requires that number. That number will be there when our plant is in operation.

Coburg, another point where we are operating has now from 800

to a thousand people, I think, and perhaps had between 100 and 200 when we commenced operating. There was no waystation or anything of that sort at Saginaw when we commenced there. There is quite a little community both there and at the mill on the mountains, five miles from there. It has not only given employment to the people who work, of course, but it has stimulated the market for the products of the farms; so that the communities are very much more prosperous than they were then, much more prosperous than they have been at any time in their history of which I have any knowledge, and I have been there all my life.

Mr. TEAL: The business of the railroads has apparently developed, by the number of trains they have run, has it not?

Mr. BOOTH: My recollection is that at the time we com-
184 menced, there was one through train each way to San Francisco, and a local train as far as Roseburg in Oregon. Since that they have had three trains each way, and some locals, I think two locals. One of the through trains is now made a local train again, about which there is some agitation in our state. The freight trains were irregular, not even daily, two or three times a week. There are many now.

Commissioner PROUTY: I do not think, Mr. Teal, we will spend much time in showing the effect of this industry upon the community. If these mills have been located there and cannot exist without this rate you would not add anything to your case by showing that the community is also benefitted by the mills?

Mr. TEAL: Very well. On this Wendling branch, since you located there, have there been any other mills located on the Wendling branch?

Mr. BOOTH: Nine other mills, three of the Southern Pacific Company, and six others.

Commissioner PROUTY: You should show the extent to which this lumber industry has developed, but I do not think it is necessary for you to show the extent to which the county has developed.

185 Commissioner COCKRELL: You spoke about the Southern Pacific. Were the mills established by the Southern Pacific Railway?

Mr. BOOTH: Yes sir; they have recently built and are operating their own mills on this branch, to which reference was made, to supply themselves with lumber.

Commissioner COCKRELL: For their own use?

Mr. BOOTH: Yes sir. I understand this was for their own use, and I presume it is.

Mr. TEAL: Generally speaking, Mr. Booth, can you state whether or not, from the beginning you speak of, the lumber industry has now spread all over the Willamette Valley, substantially, from Glendale to Newberg?

Mr. BOOTH: These rates have been extended to reach all points. I suppose that is the best answer to that. It has been done at the request of the mills, and it is done quite a good deal in the Umpqua District. It has extended the operations all over the Willamette Valley.

Commissioner PROUTY: Do you know the number of mills that operate in that valley?

Mr. BOOTH: I am not positive. It would only be hearsay.

186 Mr. TEAL: We will show that after a while, Mr. Commissioner.

Commissioner PROUTY: Proceed.

Mr. TEAL: Mr. Booth, suppose this lumber that goes south to San Francisco—Glendale is about the southern edge of it, is it not?

Mr. BOOTH: Glendale is the southern edge of it; that is my understanding; yes sir.

Mr. TEAL: That is, from Ashland?

Mr. BOOTH: There is none in the Rogue River Country. That is a soft pine product. That is not affected.

Mr. TEAL: I want to be clear about that rate in there south of Glendale. It would shorten the haul, but there is nothing moves on it. I think that is all. Mr. Booth is entirely familiar with this original matter, and he can answer anything the Commission desires to know in connection with it.

Commissioner PROUTY: You may cross examine, Mr. Cotton.

187 Cross-examination:

Mr. COTTON: Have you the statement of prices, Mr. Booth, that you get for your lumber from year to year?

Mr. BOOTH: Yes sir.

Mr. COTTON: May I have it, please?

Mr. BOOTH: Yes sir.

Mr. COTTON: I would like to offer that in evidence, and have it introduced to show the prices that they receive for lumber at various periods from 1901 to 1906. Just let it be copied into the record.

The statement referred to was received in evidence, marked "Exhibit Booth Cross Ex. No. 1," and is as follows:

TABLE No. 3—*Showing the Comparative Price of Lumber for the Past Seven Years, as Shown by the Records of The Booth-Kelly Lumber Co.*

Customer.	Order.	Date.	Year.	Ties.
S. P. Co.	32030	11/6–06	1907	Sls. 13.50
C. & N. W.	P–67278	8/7–07		
188 S. P. Co.	12544	5/17–06	1906	Sls. 9.55
C. & N. W.	P–11165	11/3–05		
S. P. Co.	H–453	5/29–05		
C. & N. W.	P–92961	3/31–05	1905	Sls. 8.50
S. P. Co.	H–193	3/11–05		
S. P. Co.	H–267	5/2–04		
S. P. Co.	H–419	7/23–04	1904	Ro. 8.50
S. P. Co.	H–201	5/19–04		
S. P. Co.	H–407	8/25–04		
S. P. Co.	H–576	4/24–03	1903	Sls. 970.
C. & N. W.	P–46238	12/5–02		
S. P. Co.	H–1810	12/30–02		
S. P. Co.	H–831	6/17–02	1902	Sls. 8.00
C. & N. W.	P–32216	3/28–02		
S. P. Co.	B.L.–1864	7/1–01		
S. P. Co.	H–860	8/23–01	1901	Ro. 7.00
S. P. Co.	H–853	8/23–01		
S. P. Co.	H–278	3/20–01		

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Timbers.	String.	Ro. fram.	Ro. sills.	36 to 40
13.50	16.50	21.00	23.000	
8.50	9.50	18.00	21.00	
7.25	7.75	15.00	16.00	
8.00	8.50	15.00	15.00	
8.50	9.50	16.00	16.00	
8.00	10.00	14.00	15.00	
7.50	8.50	12.00	12.00	

Mr. TEAL: I desire to object now, and let it go in, because I do not think the price of lumber has anything to do with it.

Commissioner PROUTY: You spent lots of time with matters that have nothing to do with these cases, then, Mr. Teal, in the last few days.

190 Mr. TEAL: I think so too.

Mr. COTTON: Did the Southern Pacific sell you any land?

Mr. BOOTH: Yes sir; the O. & C.

Mr. COTTON: The same company that owns this road?

Mr. BOOTH: Yes sir.

Mr. COTTON: It was sold through the Southern Pacific Officials; that is, these same people with whom you talked about your negotiations?

Mr. BOOTH: Yes sir.

Mr. COTTON: And that land was sold upon the Mohawk, near Wendling?

Mr. BOOTH: And other points in Lane County.

191 Mr. COTTON: How many acres did you buy?

Mr. BOOTH: The first considerable contract was tributary to the Mohawk, seventeen thousand and some odd acres.

Mr. COTTON: Seventeen thousand acres?

Mr. BOOTH: Seventeen thousand plus; yes, sir.

Mr. COTTON: What else did you buy?

Mr. BOOTH: From them?

Mr. COTTON: Yes.

Mr. BOOTH: There have been no other large contracts directly from them. We have bought in a small way quite a number of places. The total amount I could not say. I can give you the total acreage we have, and about its relation.

Mr. COTTON: No; the amount that you——

Mr. BOOTH: I couldn't say how much we purchased from them, Mr. Cotton.

Mr. COTTON: Can you not approximate in a general way, what you bought from the Southern Pacific Company at any time?

Mr. BOOTH: The substantial amounts in excess of what I have said have come from other parties. Do you want me to in-

192 include them?

Mr. COTTON: No; just your own direct purchases from the Southern Pacific Company.

Commissioner PROUTY: You say very little except the seventeen thousand acres?

Mr. BOOTH: No; I say there have been no other large contracts directly from them, but we have purchased through others and had the assignments of contracts of their lands.

Commissioner PROUTY: He asks you for purchases from the Southern Pacific Company.

Mr. BOOTH: Directly.

Commissioner PROUTY: Now, aside from the seventeen thousand acres, have there been considerable purchases?

Mr. BOOTH: There has been quite a good deal, in a small way. How much, I don't know, but I will gladly furnish it to the Commission.

Commissioner PROUTY: Would it be one thousand acres?

Mr. BOOTH: Yes; several thousand. I should say fifty per cent. This is a mere guess, but I would say ten thousand acres that
193 have come directly; but it may — more.

Commissioner PROUTY: How much timber land do you own?

Mr. BOOTH: By the way, with your permission, Mr. Commissioner, I want to correct a statemeent I made the other day—a statement I made as to our timber lands, when I was not expected to make that, and I gave what was in my mind. It referred to other lands which we own, that were not timber lands, and that have since been disposed of. We own now 147,000 acres of timber land, and of that twenty odd thousand have been cut over.

Commissioner PROUTY: Have you purchased all that land since you had this talk with the Southern Pacific Company about rates?

Mr. BOOTH: We have, substantially. There were a few hundred acres involved in the first lease we made, but only a few hundred acres.

Mr. COTTON: You have purchased the larger part of this since 1904, have you not? When did you buy the land grant land?

Mr. BOOTH: In 1902, in September.

194 Mr. COTTON: How much was that purchase; how many thousand acres?

Mr. BOOTH: Do you refer now to the land we have?

Mr. COTTON: No; the land grant, the wagon road company.

Mr. BOOTH: In round numbers, 105,000 acres—the Booth-Kelly Company. I want to say in that connection, in order that Mr. Cotton may understand it, that the company purchased the lands that were within the Cascade forest reserve, and of that in timber land there was thirty odd thousand acres, which is the whole amount of it that we now have.

Mr. COTTON: This seventeen thousand acres that you bought from the Southern Pacific Company was bought when in what year?

Mr. BOOTH: It was bought in 1899 I believe Mr. Cotton.

Mr. COTTON: You contracted to buy it when; in that year?

Mr. BOOTH: That is what I refer to. I don't refer to the date of the conveyance. It was bought on a five year contract

195 Mr. COTTON: You selected this land, this seventeen thousand acres, out of how large a reservation that was set aside for your benefit to select from?

Mr. BOOTH: There was no reservation set aside for us. We purchased substantially all within the basis in which we operated which was Mill Creek operation, or better designated as the Mohawk Basin. It overlapped, to some extent, towards the McKenzie River. We desired to make selections and throw out a lot we took but it was not permitted, and we took substantially all of it. There were some few hundred acres that were added to it later.

Mr. COTTON: You had five years in which to pay for that.

Mr. BOOTH: Yes.

Mr. COTTON: Did you pay for it in installments or did you pay for it all at the end of the five years?

Mr. BOOTH: The contract was this, that we were to pay for it in five years, to pay the interest annually in advance, at seven per cent.——

Commissioner PROUTY: I do not think, Mr. Cotton, you should take time to go into that.

Mr. COTTON: I would like to show exactly what this timber cost him.

196 Mr. BOOTH: Shall I proceed?

Mr. TEAL: I am perfectly willing.

Commissioner PROUTY: If the Southern Pacific gave it to him, you may show that, but if he made a good trade, I do not think it is necessary to go into it.

Mr. TEAL: I think it is what they were selling their lands for, but it is all right.

Commissioner PROUTY: Of course in deciding these questions, we can only consider the general aspect. We do not consider a particular contract with a private individual. For example, in this case the fact that this man bought seventeen thousand acres of land from the Southern Pacific Company would not have any influence on my mind—whether he bought it from them or somebody else.

Mr. COTTON: What does this timber cost you?

Mr. BOOTH: Seven dollars per acre.

Mr. COTTON: And what will it scale per thousand fett?

Mr. BOOTH: It was estimated at the time we purchased it, thirty thousand to the acre.

Mr. COTTON: Thirty thousand to the acre?

Mr. BOOTH: Yes, sir.

197 Mr. COTTON: And how much will it actually cut now?

Mr. BOOTH: Some of it has cut under that. Some of it has cut over. If the market conditions improve as they have, or if the market conditions should remain as they have been recently, it would exceed that by ten to twelve and one-half per cent.

Commissioner PROUTY: You can take the timber off closer.

Mr. BOOTH: Exactly; we cut more of the trees and cut the trees closer.

Mr. COTTON: As you have been cutting, has it averaged thirty thousand feet to the acre, or more?

Mr. BOOTH: Both more and less.

Mr. COTTON: I mean as an average proposition.

Mr. BOOTH: I think it has probably gone over it, anywhere from five to twelve and one-half per cent.

Mr. COTTON: That is, in the actual cut?

Mr. BOOTH: That is what I referred to.

Mr. COTTON: So it actually cuts five to twelve and one-half per cent more than thirty thousand feet to the acre?

198 Mr. BOOTH: I would say that is the average, though quite a good deal of it has cut less.

Commissioner PROUTY: We listened in the other cases to a great deal of testimony about contracts prior to the operations of the mills. I do not think we will take time in this case to do that. We will get at the general situation here. We will not get a history of what this gentleman has made on any particular purchase of land.

Mr. COTTON: But that is the whole basis of his claim.

Commissioner PROUTY: Oh, no; the whole basis of his claim is that you have put in a rate and he built his mill on the strength of that rate, and is entitled to his rate. If he made a good trade, he is entitled to that.

Mr. COTTON: If we show that his timber cost him about 20 cents, I think that is important as to what he can sell for as against the Portland mills. It would strike me so.

Commissioner PROUTY: I think you would have a right to show in a general way what his stumpage cost him.

Mr. COTTON: That is the reason I am getting at this, over
199 the scale. Mr. Booth, what disadvantages does Portland labor under in shipping south as against you—that is, against the Booth-Kelly Lumber Company?

Mr. BOOTH: In what particular, Mr. Cotton?

Mr. COTTON: Are you not familiar with any of the disadvantages which the cargo shipper experiences in shipping south to San Francisco Bay points and points in the interior of California.

Mr. BOOTH: If you will refer to anything specifically, I might be, but I don't recall anything. Of course I am speaking now of the shipping facilities. Do you mean that?

Mr. COTTON: I mean the advantages in selling and disposing of their lumber, the cargo shippers?

Mr. BOOTH: They have this advantage of us. They can take advantage of the shipping by water when the cars are not furnished.

Mr. COTTON: I was talking about the disadvantages.

Mr. BOOTH: Oh, I beg your pardon.

Mr. COTTON: Do you know of any disadvantages that the Portland cargo shipper labors under?

Mr. BOOTH: None occur to me now. I have my mind on
200 the shipping. Of course we produce lower than they do if that is what you refer to in the manufacture. That is to say, we produce less than was stated in some of the testimony that was given here.

Mr. COTTON: Your dry lumber goes where?

Mr. BOOTH: South and east.

Mr. COTTON: Your first class lumber goes south as well as east?

Mr. BOOTH: Yes, sir.

Mr. COTTON: Do you get the same prices down south for your dry lumber that the Portland mills do?

Mr. BOOTH: We aim to get the same price, grade for grade, of all kinds that they do.

Mr. COTTON: Do you get the same price east?

Mr. BOOTH: We mean to. I presume we do.

Mr. COTTON: And you get the same price for your common?

Mr. BOOTH: Grade for grade, as far as I know, we mean to, we should.

Mr. COTTON: Your logs in Wendling are situated close to the mill?

Mr. BOOTH: We are logging about five and a half miles now.

201 Mr. COTTON: And that is all covered in this cost of 1906?

Mr. BOOTH: Yes, sir. Of course we did not buy all those

lands of the railroad company, understand. We bought the alternate odd sections from them, but it is all within that district.

Mr. COTTON: And the timber you bought from other people did not cost you any more?

Mr. BOOTH: I can give you prices, if you desire.

Mr. TEAL: Please give them.

Commissioner PROUTY: Oh, no; state generally.

Mr. BOOTH: The prices we paid are the prices I gave. We bought some single claims a trifle less, for $25 an acre.

Commissioner PROUTY: You charge fifty cents stumpage in your estimate of cost?

Mr. BOOTH: Yes, sir; uniformly, up to this time.

Commissioner PROUTY: Has your stumpage cost you half that?

Mr. BOOTH: I can give you the exact cost for certain years, or we can give you the average cost, if you desire.

202 Commissioner PROUTY: What do you consider the average cost?

Mr. BOOTH: Twenty-eight cents.

Commissioner PROUTY: Do all lumber men in your section generally own their own timber?

Mr. BOOTH: Yes, sir.

Commissioner PROUTY: So that logs are not sold to the mill as they are on Puget Sound?

Mr. BOOTH: No, sir; it would be absolutely impossible for us——

Commissioner PROUTY: There is no current price for stumpage there, or is there?

Mr. BOOTH: Well, stumpage now during the past year—the highest price we have paid is $1.25. We have frequently paid $1, where we can get it for the purpose of operating.

Commissioner PROUTY: It depends on its location?

Mr. BOOTH: Surely, and where we can use it in our present operations. We would not of course pay that if it was remote and held for an investment, but the people who are operating there now who do not own their timber, and they are only small people, are

203 paying from $1 to $1.50 a thousand.

Commissioner PROUTY: Proceed, Mr. Cotton.

Mr. COTTON: Mr. Booth, you cut and sold common lumber for $6.50, and made a profit?

Mr. BOOTH: From our Saginaw mill we did; yes, sir, the first year we operated.

Mr. COTTON: That was in what year?

Mr. BOOTH: 1897.

Mr. COTTON: About how much profit was there in producing common lumber at $6.50?

Mr. BOOTH: Assuming now that it was all common, do you want to know our cost line at that time?

Mr. COTTON: Yes, your cost line.

Mr. BOOTH: Well, say $5 at the Saginaw mill in 1897.

Mr. COTTON: And this 1906 cost——

Mr. BOOTH: Is an average cost of all the mills.

Mr. COTTON: Now, that 1906 cost is about how much above nor-

mal? What do you think the normal price would be? I do not regard $6.50 as normal now, of course.

204 Mr. BOOTH: I have a memorandum here showing the increase in the various items that enter into the cost as compared with those years, Mr. Cotton.

Mr. COTTON: What would be your cost for five years?

Mr. BOOTH: An average cost for the past five years?

Mr. COTTON: Yes; for the past five years per thousand feet.

Mr. BOOTH: I haven't that.

Mr. COTTON: Would you say it exceeds $7.50?

Mr. BOOTH: Including fixed charges?

Mr. COTTON: Yes.

Mr. BOOTH: I would say it would be between seven and eight dollars. Probably eight dollars would be about right.

Mr. COTTON: That includes your fixed charges and everything?

Mr. BOOTH: Except the stumpage; yes, sir. I want to say, in that connection, that at all of our mills we commence the logging, of course, at the nearest possible point. For instance, we have done our logging for less than two dollars, where now it costs us five dollars, and the cost has gradually increased. Another thing: We operate our logging altogether with the exception of Saginaw by

205 streams, and we have taken the lumber that was near the streams and floated it to the mills, which are located tributary.

Commissioner PROUTY: How do you get your lumber to the streams?

Mr. BOOTH: By steam, the same process as is common to all the lumbermen there, and the time for that has practically disappeared. We are now surveying for railroads, and we will have to confine our operations very largely to railroads after this.

Commissioner PROUTY: How far can you haul it by steam?

Mr. BOOTH: Well, indefinitely, of course.

Commissioner PROUTY: I mean profitably.

Mr. BOOTH: The farthest we have hauled has been say two and one-half miles. That means the use of a yarder and two road machines. The road machines haul from half a mile to a mile, but I would say that it would be better practice to have a railroad if you are to haul more than one mile.

Mr. COTTON: At the time this $3.10 contract was made, how much did you agree to cut a year, if any?

206 Mr. BOOTH: What $3.10 contract?

Mr. COTTON: I thought you were relying on some understanding——

Mr. BOOTH: Oh, the understanding?

Mr. COTTON: Yes.

Mr. BOOTH: We were cutting then about forty thousand feet a day at Saginaw. I mean a day of ten hours, a single shift; about 65,000 at Coburg; and we agreed to cut or to ship of the forest products from the Wendling mill the first year 2500 minimum car loads, which at that time was 10,000 feet.

Mr. COTTON: That is, did you agree to that, or state that you would do it, that you thought you would do it?

Mr. BOOTH: The letter says, "We agree to." I mean as to Wendling. The letter referred solely to Wendling. The other mills had been constructed. We bought them and enlarged them and improved them, but the letter referred solely to the Wendling plant. It says "We agree to." That is my recollection.

Mr. COTTON: There was not anything said about rates in that—as to what rates would be charged you?

207 Mr. BOOTH: Not in the letter. That was understood, though, before we purchased. As I said a while ago—in fact, it would be a repitition to say—our contract was not given until we had made the arrangement for the road and agreed to construct the mill.

Mr. COTTON: And that contract undertook to state the whole understanding between the parties?

Mr. BOOTH: I don't want read into my testimony that there was a written contract, but a definite understanding.

Mr. DILLARD: I understood you to say before that you had a letter agreeing to put these rates in. That was my understanding.

Mr. BOOTH: I didn't say it. I said that was first settled. It was on that understanding that we did what we did, but the letter referred to the construction of the road, the part we should contribute, the size of the mill that we should build, and the amount of lumber we should ship the first year.

Mr. COTTON: And there was no writing whatever agreeing as to the rate?

Mr. BOOTH: None whatever, except as it may have been referred to in various letters.

208 Mr. COTTON: Nor as to its continuance or anything about it?

Mr. BOOTH: Nothing further than what I have stated.

Commissioner PROUTY: I do not understand that there is any claim on the part of these complainants that there was any contract for this rate.

Mr. TEAL: No, sir; we have never made such a claim.

Mr. DILLARD: I understood him to say he had a letter covering it. It was my misunderstanding.

Mr. BOOTH: I don't think I said it. It is not correct.

Mr. DILLARD: It was probably my misunderstanding entirely.

Mr. COTTON: Was it your understanding that this $3.10 rate was to continue forever?

Mr. BOOTH: Well, that is a long time.

Mr. COTTON: Well, for an indefinite period?

Mr. BOOTH: Yes, sir; for an indefinite period; that it should continue indefinitely. That is a good way to put it.

Mr. COTTON: As long as your timber lasted you were to get a $3.10 rate?

209 Mr. BOOTH: I would not include that in an indefinite statement; no. I should think it would be fair—do you want

me to interpret that—during the life of the operation of the mills that were built on that, but not necessarily to cover all our timber.

Mr. COTTON: You only built one mill on that.

Mr. BOOTH: We built three mills on that, practically. We rebuilt the Coburg mill, Mr. Cotton.

Mr. COTTON: When?

Mr. BOOTH: The year after we purchased it, just at the time we commenced in 1899.

Mr. COTTON: That rate was necessary to enable you to compete with people that had water transportation?

Mr. BOOTH: It was absolutely necessary. I say that unqualifiedly.

Mr. COTTON: It was based on the water rate?

Mr. BOOTH: It was.

Commissioner PROUTY: If conditions so changed that the water rate was advanced, would there have been inequity in the advance of your rate by the railroad company?

Mr. BOOTH: Certainly there would. We would be perfectly content to follow the water rate.

210 Commissioner PROUTY: So that really you did not expect that rate to last forever, but as long as conditions were the same?

Mr. BOOTH: That was the basis of it, so stated in all our talks and correspondence. That was the basis of the rate making with this exception, that our rate was a trifle higher, and would have remained so, because there is some advantage in shipping smaller quantities in car loads.

Commissioner PROUTY: You understand the water rate is a trifle higher than it was when this rate was put into effect, do you not?

Mr. BOOTH: Yes, sir; it is from 25 to 75 cents higher at this time.

Commissioner PROUTY: A thousand feet?

Mr. BOOTH: Yes, sir; a thousand feet; but it is less than our rate—less than our rate would be if we had the $3.10 rate, not the five dollar rate.

Mr. COTTON: Did they say or give you to believe that they would follow the water rate?

Mr. BOOTH: I don't recall that anything was ever said about following the water rate.

Mr. COTTON: There was nothing said about that?

211 Mr. BOOTH: I said following it. It was stated it was put in to meet the water rate—so stated in our conversations and in our correspondence. The language that was used when the rate was re-established, which we understood was to be permanent, was that we would undertake to operate our mills if the rate was restored on the $3.10 basis. That is the language of Mr. Stubbs.

Mr. COTTON: Did Mr. Stubbs at that time tell you it would continue for any length of time?

Mr. BOOTH: I can repeat what I said. He said that if this matter had been left to him originally, he would not have put in the rate. He thought it was wrong for the railroad, because later they could get more for it, and it would enrich the holders if they would hold it, but inasmuch as it had been put in and the moral obligation ex-

isted, he said they were in for it. That was his statement, and he did this—I do not want to volunteer anything, Mr. Cotton, but simply to say this——

Mr. COTTON: That is all right.

Mr. BOOTH: In order that you may know there is no misunderstanding. That there might be no misunderstanding as to the term green common lumber and as to what we should undertake
212 to do, he put it in writing.

Mr. COTTON: The grades of lumber you manufacture and sell are about the same as those manufactured and sold by Mr. Poulsen?

Mr. BOOTH: I couldn't answer that. All I know is that I judge from his testimony we have about the same amount of common lumber. As to the grades and qualities I couldn't say.

Mr. COTTON: And grade for grade it will run just about the same.

Mr. BOOTH: I think a No. 1 board of ours is as good as a No. 1 board of his.

Mr. COTTON: Do you think some of the other mills in Portland run higher; if so which ones?

Mr. BOOTH: The Eastern & Western run a very much higher percentage of clears, according to Mr. Buehner's statement to me and also Mr. Ayres and Mr. Ransom.

Mr. COTTON: The more clears there are, the more profit?

Mr. BOOTH: Yes, sir.

Mr. COTTON: Is there any disadvantage in selling lumber in San Francisco in car load lots?

Mr. BOOTH: I would prefer to sell it in car lots.

213 Mr. COTTON: Why?

Mr. BOOTH: Because we cater to special orders. If a man wants a quantity of any certain kind of lumber, it can be gotten to him quicker upon the car, if the service is proper. I don't say that it has been, but that would be a fair inference, and anyone I think would prefer to buy at the same price by car load rather than by ship load.

Mr. COTTON: Are there not some advantages connected with the fact that you can sell to the small dealer, whereas the cargo man can only sell to the people who buy cargoes?

Mr. BOOTH: No; the cargoes are divided. Different ones buy from the same cargo. That is, they may do it, and in practice have done it.

Mr. COTTON: But you can meet all the odd lot orders, can you not?

Mr. BOOTH: That is what we specially aim to do, to get the odd lot orders.

Mr. COTTON: These cargoes go down in what size cargoes from Portland; how many feet to the cargo?

Mr. BOOTH: I wouldn't say that I could answer that definitely, but my understanding is from half a million to a million and
214 one-half.

Mr. COTTON: You send yours down in car load lots to be delivered in the car load to any dock or wharf or side track or yard

or any other place which is reached by the switching lines in San Francisco?

Mr. BOOTH: That is right.

Mr. COTTON: All around the Bay, any place?

Mr. BOOTH: Yes, sir.

Mr. COTTON: The cargoes all go to one dock?

Mr. BOOTH: No, sir.

Mr. COTTON: Do they not as a rule? I mean when a ship goes down with a cargo, she goes to one dock and unloads?

Mr. BOOTH: I think that is probably true, but there are many yards, of course, near together, and when they are in the channels, they move from one place to another.

Mr. COTTON: But these little odd lot fellows would have to get their stuff and haul it to their yards or the place where they intend to use it.

Mr. BOOTH: I have seen this, when we were interested in the yards there to some extent. The boats w[illegible]t into the channels there
215 and were moved along to accomm[illegible]date the purchasers, who had yards directly on the chann[illegible]

Mr. COTTON: But that does not cover t[illegible]e little fellow.

Mr. BOOTH: I refer to the little fello[illegible]; yes, sir.

Mr. COTTON: Have all the little fellows got docks on the channel?

Mr. BOOTH: I don't say all of them. I say those who have docks on the channel. I am not acquainted with all those yards. I don't want to be understood now as saying that there is not a distinct advantage in my mind in shipping in car loads, of course that was recognized, and hence our rate. It has always been higher than the cargo rate. I meant to explain that, and I wish to repeat it.

Mr. COTTON: That advantage amounts to about how much in dollars per thousand?

Mr. BOOTH: Well, I think four dollars has been a fair cargo rate. Ours has been five dollars and seventeen cents. Our cost would be one dollar and seventeen cents more on that basis.

Commissioner PROUTY: We will stop here until 2 o'clock.

The Commission, at 12.35, took a recess until 2 p. m.

216 After Recess.

Commissioner PROUTY: Mr. Booth, you may resume the stand.

R. A. BOOTH resumed the stand for further cross-examination.

Mr. COTTON: You have been over the road to California Mr. Booth?

Mr. BOOTH: Yes, sir.

Mr. COTTON: There are very heavy grades on the road south of your place?

Mr. BOOTH: Yes, sir.

Mr. COTTON: Over the Siskiyou Mountains?

Mr. BOOTH: Yes, sir.

Mr. COTTON: It takes about two or three engines to move an ordinary passenger train to the top of the mountain does it not?

. BOOTH: I think in practice they use two and three; yes, sir.
. COTTON: And there are heavy curves, besides the elevation?
Mr. BOOTH: Yes, sir.
Mr. COTTON: They make in one place a complete loop, so ne tunnel is above the other tunnel?
. BOOTH: I have heard that said. I couldn't say positively. I t it is true.
. COTTON: Going up the mountains you see three or four tracks below you?
. BOOTH: Three tracks.
. COTTON: On the other side, going down into Dunsmuir is a hard crawl down a steep hill?
. BOOTH: The hill is steep; yes, sir. There is less curvature, presume it is a hard hill.
nmissioner PROUTY: Can you not show those gradients, Mr. n, in the same way they were shown on the Northern Pacific?
. COTTON: I hardly think so.
. TEAL: We will admit the road going over the Siskiyou Mountis a heavy grade.
nmissioner PROUTY: We would like to know about how much here is. I have been over there once or twice. As I remember, de practically all day.
. DILLARD: Here is a cut that we will introduce, and I will have it reduced to a written statement, the number of engines at any given place, and so on.
Mr. TEAL: I am perfectly willing to have the time card , to show the time it takes.
nmissioner PROUTY: You take this, Mr. Dillard, and put the shown by that profile into words, so that we will know what the ces are.
. DILLARD: Very well; I will take this one now and send a back from Chicago.
. COTTON: Your rates into Utah and to all points east are the as to Portland?
. BOOTH: That is my understanding——
. COTTON: And to Idaho you pay five cents a hundred more?
. BOOTH: There is a differential, just what I can't say. We o lumber into Idaho.
. COTTON: You do ship east of there?
. BOOTH: We ship some to Utah and we ship to Colorado.
. COTTON: And the statement which has been produced of your ents in the other case is correct?
. BOOTH: I presume it is absolutely correct. You speak, Mr. n, of the matter of shipments. May I say something further on that? I have the statements here taken from our records. I have been figuring some during the recess. I found the volume of business we have shipped south is greater than I The lowest we have shipped in any one year has been 15.9 per exclusive of railway material, and the highest 47½ per cent. verage has been beyond 22 per cent. So I have come to the

conclusion that there is a greater percentage that has gone into the $3.10 territory than I testified, and I am of the impression, too, that there is a greater amount of it goes into California than I testified.

Mr. DILLARD: Did you mean there was 22 per cent. went into the $3.10 territory?

Mr. BOOTH: No, sir; the question was what we sent south.

220 Mr. DILLARD: That was 22 per cent.

Mr. BOOTH: The average has been between 22 and 23 per cent.

Mr. DILLARD: And of that, about half went to the $3.10 territory?

Mr. BOOTH: That is what I said; but I say it is my impression, from the calculation I have made, that it exceeds one-half of the total commercial business that goes south.

Mr. COTTON: How much does it exceed it; to any great extent?

Mr. BOOTH: I think it is two thirds of it. It might be more. It would be more than less, in my opinion.

Mr. COTTON: In connection with Mr. Booth's examination, I would like to have copied and considered in evidence the report of the shipments eastbound which was made in the other case by the Booth-Kelly Company. That will be all, Mr. Booth.

Redirect examination:

Mr. TEAL: Mr. Booth, from Willamette Valley points, can you get into the Northern Pacific territory?

221 Mr. BOOTH: No sir.

Mr. TEAL: In connection with the shipment of lumber south, do you know whether or not the Southern Pacific would allow any box cars to go that way or not?

Mr. BOOTH: I couldn't say.

Mr. TEAL: On all flat cars, do you have to stake them?

Mr. BOOTH: We have to stake them; yes sir.

Mr. TEAL: And tie the stakes?

Mr. BOOTH: Yes sir. It is about $3.50 a car, we estimate it.

Mr. TEAL: There is one question I asked, but I do not think it was answered. I wish you would state, as a matter of fact, whether or not if this understanding and agreement had not been had respecting the rates would you have made the investments you have made in the lumber industry?

Mr. BOOTH: I positively would not.

Commissioner PROUTY: What effect would be produced on your business, Mr. Booth, if your rate to the east were to be withdrawn, or if you were required to pay five cents more to Portland?

222 Mr. BOOTH: Well, we could not operate to the extent we do. If the eastern rate was withdrawn, it would limit us to a very little business. I am assuming now that the other rates were to be restored. Shall I assume that?

Commissioner PROUTY: Yes.

Mr. BOOTH: I would say it would cut our output practically in half, but we could do some business if this rate was restored.

Commissioner PROUTY: That is, it would be about as serious a

matter for you to withdraw the eastern rate as it has been to withdraw this rate?

Mr. BOOTH: Well, may I say in explaining that that — what we have been trying to do, as I hope you have noticed from the statements, is to develop the eastern trade. Our shipments have grown very rapidly from the beginning until now. In the eastbound traffic, we consider it a more desirable and a more stable market than the one below. So that we think it is an essential factor in our operating to any considerable extent.

Commissioner PROUTY: What effect will it have on your
223 eastern business if the advances are maintained which have been made.

Mr. BOOTH: The present rates?

Commissioner PROUTY: Yes sir.

Mr. BOOTH: I am quite sure we will not operate more than one mill.

Commissioner PROUTY: I am talking, not about your San Francisco rates, but about your eastern rates.

Mr. BOOTH: Yes sir; I understand.

Commissioner PROUTY: You think the effect of that would be to reduce your operations to a single mill?

Mr. BOOTH: The plan at the present time is to operate one mill only. That has been discussed with the gentlemen interested.

Commissioner PROUTY: Suppose those advances are continued, and your San Francisco rate is restored; what will be the effect upon the business?

Mr. BOOTH: Practically the same. We might operate a little bit more. I think possibly we would operate one of our larger mills and the Saginaw mill. That would mean about 35 per cent. of our present output.

224 Recross-examination:

Mr. COTTON: Just one question. Something has been asked about the cars. The cars that come into your section of the country from San Francisco come there empty, do they not, practically entirely?

Mr. BOOTH: A great many of them do.

Mr. COTTON: There is really no movement of merchandise up into the upper Willamette Valley from San Francisco?

Mr. BOOTH: I presume—it would only be a presumption—that of course there is lots of merchandise produced there by the merchants, and so on.

Mr. COTTON: That all comes from Portland, does it not?

Mr. BOOTH: No sir. *If* course I can only say this. I have watched the exchanges in the banks, those I am interested in and others. There is about half as much goes to San Francisco as to Portland, that we estimate goes for merchandise.

Mr. COTTON: But your consumption of merchandise in the lower valley is comparatively small, as compared with the lumber shipments?

225 Mr. BOOTH: Our merchandise sales, when we are running our mill—I mean of that put in over our counters—is about

$100,000. Of course what we consume ourselves is a very large item in addition. I mean in the way of belting, oils, pipe and so on.

Mr. COTTON: I mean the cars that come in.

Mr. BOOTH: I don't know how many cars that would represent. That is the volume in dollars.

Mr. DILLARD: You do know, as a matter of fact that the excess of tonnage is south, do you not?

Mr. BOOTH: I am quite sure that is true.

Mr. TEAL: Mr. Chairman, the intervenors have asked me to allow them to present their testimony now, as they are very anxious to get away. It is quite convenient to me to have them do so, if it is to you.

Commissioner PROUTY: Proceed, Mr. Abel.

226 *Testimony on Behalf of the Intervenors.*

PHILIP BUEHNER, a witness produced on behalf of the intervenors, being duly sworn, testified as follows:

Mr. ABEL: You reside at Portland, Mr. Buehner?

Mr. BUEHNER: Yes sir.

Mr. ABEL: You are connected with the Eastern & Western Lumber Company?

Mr. BUEHNER: Yes sir.

Mr. ABEL: When was that company organized?

Mr. BUEHNER: The Eastern & Western Lumber Company was organized in 1902; but the Eastern Lumber Company, the mill which we now own, was organized in 1899.

Commissioner PROUTY: I was not here when Mr. Buehner testified in the other case. Did you go over all this in that case?

Mr. BURHNER: No sir; I did not.

Commissioner PROUTY: All right; proceed.

Mr. BUEHNER: The Eastern mill, the one we have now, was organized, I think, in June, 1899.

227 Mr. ABEL: What has been the capacity of your mills since 1899?

Mr. BUEHNER: We run about from 60,000,000 to 100,000,000 a year—pretty close to 85,000,000 a year.

Mr. ABEL: During the past eight years?

Mr. BUEHNER: Yes; the past seven years.

Mr. ABEL: Where is your mill located?

Mr. BUEHNER: It is located in Portland, Oregon.

Mr. ABEL: From what source do you get your timber, your logs?

Mr. BUEHNER: We bring them up the Columbia River, towing them up the Columbia River.

Mr. ABEL: On the Washington side?

Mr. BUEHNER: Yes sir.

Mr. ABEL: Does your company do its own logging?

Mr. BUEHNER: About 50 or 60 per cent of it.

Mr. ABEL: Please examine this blueprint and state what it shows.

Mr. BUEHNER: This is a similar blue print to the one I introduced in the other case. It simply shows the price of logs for the last eight

years, and also the selling price, actual sales, of common lumber, which is about three quarters of 70 per cent. of the lumber—
228 common lumber. That is base lumber.

Commissioner PROUTY: You may introduce that in this case also, but we will not spend any time on that, because we will refer to Mr. Buehner's testimony in the other case. We do not want to go over all this again.

(The blue print referred to was received in evidence, and marked "Intervenor's Exhibit 1.")

Mr. ABEL: You say 70 per cent. of the lumber manufactured at your mill is common lumber?

Mr. BUEHNER: Well, more than 70 per cent. of our average is common lumber.

Mr. ABEL: Where is it marketed, and where has it been marketed during the past few years?

Mr. BUEHNER: It is marketed all over the world. We export quite a good deal.

Mr. ABEL: What portion goes to San Francisco or Bay points?

Mr. BUEHNER: The last two or three years, I doubt whether more than 10 or 12 per cent. went to San Francisco Bay points.

229 Mr. ABEL: I want to call your attention to this diagram, particularly to the sharp drop in the price of lumber in the fall of 1903. How do you explain that?

Mr. BUEHNER: That was a drop due to the taking out, in January, of this $3.10 rate from Portland to San Francisco Bay points. The price of lumber dropped there in one month $2. Then it kept on dropping the next three or four months, until we sold common lumber for a dollar less than the price of our logs in Portland.

Commissioner PROUTY: I think every lumber man here who has given an account of this business has shown a loss in the year 1904. Was that all due to the taking out of this rate to San Francisco?

Mr. BUEHNER: Oh, I presume not, Mr. Commissioner; but the big drop was caused just that month when the rate was taken out. There was a drop of $2 just that one month.

Mr. ABEL: What do you know about this $3.10 rate, Mr. Buehner?

Mr. BUEHNER: The first I heard of the $3.10 rate was in 1899, when we built the Eastern mill, and after the rate was made,
230 we definitely decided to locate the mill at Portland, Oregon. We started the construction in July, 1899, and it was largely due to the fact that my partner as well as myself thought the rate was a permanent rate, so far as we were concerned, to Portland, and that the rate really was made to Portland before it was made to the valley. The western mill, I may say, though for information, had been built six or seven years prior to that at Portland. That was a different company, and I had no interests at that time in the Western Lumber Company. In fact, several other mills were built there in the years 1900 to 1903. I can give the names, if you wish them.

Mr. ABEL: Just name the mills that were built in reliance upon the $3.10 rate.

Mr. BUEHNER: Our man forwarded this letter to me since I left

Washington. The East Side Mill and Lumber Company, capacity 100,000 feet, commenced operations in June, 1903.

The Jones Lumber Company very largely increased their capacity in that time.

The Oregon & Washington Lumber Company commenced operations in 1904, but they had commenced the construction long
231 before that time. It takes about a year to a year and a half to build a mill.

The Portland Lumber Company mill was started by Mr. Ritan in 1900. It was built a short time before that, but it was started in 1900, and it has to-day a capacity of over 200,000 feet.

The Standard Box & Lumber Company mill was built in 1903.

The Eastern & Western Lumber Company is my mill.

The Peninsula Lumber Company mill was built in 1902 and 1903. It is a large mill and has a capacity of something like 150,000 feet per day.

There are several other mills near Portland which are in this statement, but which I did not include.

Commissioner COCKRELL: How long ago were they built before this rate was put in?

Mr. BUEHNER: No, they were built during the time the rate was in effect.

Commissioner COCKRELL: How many mills were there?

Mr. BUEHNER: The Portland Lumber Company, the old mill—not the present, but the old mill—was built prior to 1900, and then was rebuilt about two years after that, and very largely in-
232 creased. The North Pacific Lumber Company—I did not mention that—was there before, and the Jones Lumber Company was there before.

Mr. ABEL: There were three companies there before that?

Mr. BUEHNER: Yes sir. No; there were other companies there that I didn't mention. There were four or five other companies there which are not mentioned here at all. They were there before.

Mr. ABEL: They were there before the rate was put in?

Mr. BUEHNER: Yes sir.

Mr. ABEL: How many companies were there altogether before the rate was put in?

Mr. BUEHNER: I think there were five mills there, and there have been about seven built since the rate was put in.

Mr. ABEL: Were any of the mills in operation in the upper Willamette Valley at the time the $3.10 was established?

Mr. BUEHNER: There were some few small mills up there; yes sir—very small little local mills.

233 Mr. ABEL: Have you any knowledge as to the cost of producing lumber at Portland as compared to the cost in the upper Willamette Valley?

Mr. BUEHNER: From the best information I can gather and I have tried to be careful about that, I have come to the conviction that they can put their lumber, all grades, finished lumber, on cars at just about what our logs cost us in Portland.

Commissioner PROUTY: Laying out of the case entirely the matter

of stumpage or the cost of the logs, does it cost you more to manufacture logs in Portland than it does them?

Mr. BUEHNER: It seems like it, from what they report. It cost us last year, as I testified here, $4.47. It began with $3 and something, and graduated up, as I testified here, until last year it was $4.47 a thousand, and the logs last ye r——

Commissioner PROUTY: Never mind the logs. What does it cost them to manufacture the log when it is at the mill?

Mr. BUEHNER: From their testimony, I should say it costs them less.

234 Mr. TEAL: Pardon me. How much did you say it cost you to manufacture, Mr. Buehner?

Mr. BUEHNER: It cost us last year $4.47 a thousand. I can reduce that——

Commissioner PROUTY: You need not go into the details again.

Mr. ABEL: The principal difference then, is in the value of the stumpage. The stumpage in southern Oregon is so much lower.

Mr. BUEHNER: And the fixed expenses. Our labor is always higher. In large cities it is always higher. We probably pay 20 per cent more for labor than they do in the mills. I don't know how it is in the logging camps.

Mr. ABEL: What has been the value of the San Francisco market to your mill since the establishment of the $3.10 rate? I mean what difference has resulted from the taking of that rate?

Mr. BUEHNER: I was manager of the Eastern Company at one time, and as long as we could ship down by car, I am satisfied that the Eastern Company shipped about 25 per cent. into what we call Bay points. We have an office down there and it is our best

235 market. Since that time, of course we have not shipped very much.

Mr. ABEL: Do any of your customers want less than cargo shipments of lumber?

Mr. BUEHNER: Yes. The large buyer, the large man can ordinarily take a cargo, a schooner load. We ordinarily figure a schooner load to be about eight hundred thousand feet. They vary in size, though, and it takes a pretty good man to buy at one time a cargo of lumber. All of the buyers that have rail connection, and most of them, have, much prefer to buy their lumber as they require it in carload lots and have it delivered right in their yards. They much prefer it. That is, we ordinarily, in our minds, figure about two dollars a thousand difference between the price we can get for a rail shipment and the price we have to deliver a cargo on.

Mr. ABEL: Do you consider you are entitled to as low a rate to Bay points as the upper Willamette mills?

Mr. BUEHNER: Well, my impression would be that we ought to have a lower rate to San Francisco than the Valley mills.

Mr. ABEL: For what reasons?

Mr. BUEHNER: Probably fifteen per cent of their total

236 output goes into the Bay points, but they have an advantage over us of about $2.50 or $3.00 per thousand on their entire output, which puts us at a disadvantage on our output.

Mr. ABEL: That is, the cost of manufacture and their lower stumpage?

Mr. BUEHNER: Stumpage and everything, of course.

Mr. ABEL: What have you to say about competitive conditions at Portland, whether competition exists at Portland?

Mr. BUEHNER: Certainly; water competition.

Mr. ABEL: Has your market been restricted to Bay points in the application of the five dollar rate?

Mr. BUEHNER: So far as the rail shipments go, they have; yes, sir.

Mr. ABEL: To what extent?

Mr. BUEHNER: I don't think we ship by rail two per cent. of our output for the last two years. I am guessing now, but maybe three or four per cent.—a very small amount of our output.

Mr. ABEL: What was your percentage under the $3.10 rate?

Mr. BUEHNER: I am estimating that too, but I think I am
237 safe in saying that we shipped 25 per cent.; if anything, a little more than 25 per cent., into the Bay points.

Mr. ABEL: By rail?

Mr. BUEHNER: By rail.

Mr. ABEL: What have been your cargo rates during the past eight years from Portland to the Bay?

Mr. BUEHNER: The cargo rates vary somewhat, but if you take an average, it runs very close to five dollars a thousand, or five dollars and fifty cents. We just had a cargo at four dollars and fifty cents, and the next cargo shipped before I left was four dollars and seventy-five cents. We never get a cargo down to three dollars and fifty cents excepting in special cases, where they load the hold of the schooner with some other commodity, and we get the deck load, the top loading; but I never recollect the time that we got that for less than three dollars and seventy-five cents. I never knew the time when we had three dollars and fifty cents on the San Francisco schooner rate.

Mr. ABEL: The rates were higher in 1906, were they?

Mr. BUEHNER: Yes; they ran up to nine dollars and fifty
238 cents. We paid nine dollars and fifty cents.

Mr. ABEL: What was the cause of that?

Mr. BUEHNER: There was a great demand for schooner rates after the San Francisco fire.

Mr. ABEL: That has fallen off now?

Mr. BUEHNER: That has fallen off now to four dollars and seventy-five cents and five dollars. But in buying cargo lots there is always more or less breakage. A man buys a great deal of lumber that he doesn't need. He has to handle it in his yard and pile it up; and we have always got to sell lumber by cargo in San Francisco at less than the ordinary price of common lumber, which is not the case where a man can ship by rail.

Mr. ABEL: You say your sales, when made in cargo lots, are limited to the large buyers?

Mr. BUEHNER: Yes.

Mr. ABEL: Small buyers who want merely a car load or two, do not buy them?

Mr. BUEHNER: Most of the small buyers never buy a cargo of lumber.

Mr. ABEL: Do you ship any broken lots by vessel?

Mr. BUEHNER: Very little. We do that occasionally, but very very little. That is rather the exception than the rule.

239 Mr. ABEL: That is all.

Commissioner PROUTY: Mr. Teal, do you desire to ask any questions?

Mr. TEAL: Just a very few.

Commissioner PROUTY: You may proceed.

Mr. TEAL: On a $3.10 per ton rate, Mr. Buehner, that is equal to five dollars and twelve cents a thousand?

Mr. BUEHNER: About that; yes, sir.

Mr. TEAL: And on a five dollar per ton rate, that is equal to eight dollars and twenty-five cents a thousand, is it not?

Mr. BUEHNER: I suppose so, about that.

Mr. TEAL: Do you pay for loading these vessels at your dock?

Mr. BUEHNER: We deliver within reach of the tackle on the schooner.

Mr. TEAL: You deliver at the ship's tackle on the deck, and the ship loads it?

Mr. BUEHNER: Yes, sir.

Mr. TEAL: Who unloads it at the other end?

Mr. BUEHNER: The ship takes it out, and we handle it

240 away from the ship's tackle.

Mr. TEAL: Who takes it out and puts it to the ship's tackle on the dock?

Mr. BUEHNER: The steamer does.

Mr. TEAL: So that a charter rate means from tackle to tackle, does it not?

Mr. BUEHNER: Yes, sir.

Mr. TEAL: You run it down on your dock, they put it on the ship, and they take it off at the other end, and whoever buys it handles it from there?

Mr. BUEHNER: But that costs more than handling it in the car, if that is what you are driving at.

Mr. TEAL: No; I am not driving at anything. I am just asking the question. So that on the basis even of a five dollar charter, to start with, the Portland mill, on the water rate, would have three dollars and twenty-five cents over the rail rate at five dollars, would it not?

Mr. BUEHNER: Just repeat that please.

Mr. TEAL: Take a charter at five dollars and the rail rate of five dollars, and it would give whoever could ship by charter three dollars and twenty-five cents advantage to start with, would it

241 not? I mean simply at the starting point.

Mr. BUEHNER: Yes. I will say yes. I will see what the next question is.

Mr. TEAL: I have no more. You can explain anything you desire.

Mr. BUEHNER: If you got the same price for your lumber that you ship by cargo, but you don't. As a matter of fact, anybody who ships down to that place by schooner must take one dollar and fifty cents to two dollars less.

Mr. TEAL: You have already said it was equivalent to one dollar and fifty cents to two dollars a thousand advantage, the ability to ship by rail, or equivalent to that advantage over the cargo shipment. In order to arrive at this estimate, I have prepared from the record of charters for the past five years, up to February 1906, the charters before the San Francisco raise, and they varied from three dollars and seventy-five cents to four dollars and fifty cents from Portland to San Francisco. Would you say that was a fair average from 1903 to 1906?

Mr. BUEHNER: No. Is that a sailing vessel charter or a steam schooner charter?

Mr. TEAL: This is a record of charters during five years.

242 Mr. BUEHNER: That is very indefinite. I might explain that. You know with a sailer charter you have to pay for the towing in and out of the harbor. That basis I think is what they call the old sailer charter, and a man in the business knows how to figure that.

Mr. TEAL: What was the Virginia? Do you remember her?

Mr. BUEHNER: The Virginia?

Mr. TEAL: Yes.

Mr. BUEHNER: She was a sailer.

Mr. TEAL: What is the Noyo? That is a steamer, is it not?

Mr. BUEHNER: I don't know. I never heard of it.

Mr. TEAL: I will show exactly what it is.

Mr. ABEL: Are we to understand, Mr. Buehner, that in addition to the charter rates there is a charge for towing down at Salem and Columbia across the bar?

Mr. BUEHNER: On all sailing vessels the towing is paid by the mill. It is ordinarily fifty cents a thousand; but that is all implied when they make a charter by sailer.

Mr. TEAL: That is included, then?

Mr. BUEHNER: That is additional.

243 Cross-examination:

Mr. COTTON: You say you shipped out two per cent. only for some period. I did not catch the period.

Mr. BUEHNER: Since this $3.10 rate was in—I am guessing now—I don't think over two or three per cent. of our output by rail went into San Francisco Bay points.

Mr. DILLARD: Did you say since the $3.10 rate was in?

Mr. BUEHNER: Repealed.

Mr. COTTON: Is the rate by steamer a little higher than the rate by sailing vessel—that is, the charter?

Mr. BUEHNER: Yes; it is always a little higher.

Mr. COTTON: Is this taken down by regular line steamers; that

is, I mean steamers that are engaged in carrying passengers and freight generally for the public, or is it taken down by cargo lumber ships that devote their carriage entirely to lumber at one mill?

Mr. BUEHNER: Well, usually by schooners especially equipped to carry lumber, and they carry lumber specially, although some of them carry passengers too, to a very limited amount.

Mr. COTTON: The business is now mainly in these special
244 class lumber schooners?

Mr. BUEHNER: Special lumber schooners.

Mr. COTTON: They come up in what way?

Mr. BUEHNER: They come up light, most of them.

Mr. COTTON: Is there any business from any other point or place to San Francisco than Portland and Willamette Valley points, in lumber?

Mr. BUEHNER: In schooners?

Mr. COTTON: Well, anyway; by rail, schooners, or otherwise.

Mr. BUEHNER: Yes; the San Francisco Bay points get lumber from the whole Pacific Coast, all the mills on the Oregon coast, and the Columbia River mills and all the Grays Harbor and Puget Sound mills.

Commissioner PROUTY: And you sell lumber to all parts of the world, do you not?

Mr. BUEHNER: Yes, sir.

Mr. COTTON: Is there any lumber produced down in Coos Bay?

Mr. BUEHNER: Yes, sir.

Mr. COTTON: Are there any large mills down there?

Mr. BUEHNER: I have never been there, but just from general knowledge I know there are some down there.

245 Mr. COTTON: Of large capacity?

Mr. BUEHNER: They are reported to have a good sized capacity; yes, sir.

Mr. COTTON: Do you know what the cut is down there per year, on Coos Bay?

Mr. BUEHNER: No; except by hearsay, Mr. Cotton.

Mr. COTTON: I mean by reputation.

Mr. BUEHNER: I understood they cut last year about three hundred million—that is, that whole bay, not one particular mill.

Mr. COTTON: Is there any cut down at Tillamook?

Mr. BUEHNER: Not very much.

Mr. COTTON: Do you know whether there is any cut up at the places on Washington coast that have no railroad facilities?

Mr. BUEHNER: Well, there is South Bend, Willapa Harbor and Grays Harbor. They are very large shippers.

Mr. COTTON: They have railroad facilities, branch lines of the Northern Pacific.

Mr. BUEHNER: Some of the mills have no rail facilities.

Mr. COTTON: But then the cargo shipments from there are very large, are they not?

246 Mr. BUEHNER: Yes, sir; very large.

Mr. COTTON: There are some mills up on Puget Sound that have no rail facilities at all?

Mr. BUEHNER: Yes, sir.
Mr. COTTON: On the west side?
Mr. BUEHNER: Yes, sir.
Mr. COTTON: Are they large mills?
Mr. BUEHNER: Some are very large.
Mr. COTTON: The —— mill had no rail facilities at all, did it?
Mr. BUEHNER: No, sir.
Mr. COTTON: And that was at one time the largest producing mill in the northwest?
Mr. BUEHNER: Except when they transferred on barges. That was the only way they could get across the Sound and connect.
Mr. COTTON: The mills at Marshfield and these various mills that have no rail facilities are all shippers to San Francisco in competition with your mills in the Willamette Valley points?
Mr. BUEHNER: Yes, sir.
Mr. COTTON: Tell us how San Francisco compares with
247 any other market that you reach, so far as price is concerned? Is it high, low, medium or what kind of market is it generally.
Mr. BUEHNER: It is a market where you get the very best prices and the very lowest prices. My experience is a little different from that of Mr. Booth, as he testified this morning. We ship nothing but No. 1 stock to San Francisco, No. 1 clear, and we always insist on a very good price for our lumber in the San Francisco market; but then I know they sell lumber very cheap down there, less than I thought.
Mr. COTTON: You say you sell nothing but No. 1 down there?
Mr. BUEHNER: We intend to ship nothing but No. 1 common to San Francisco.
Mr. COTTON: But all these little mills send their No. 2 common in there, and it depresses the price of No. 2 common very low, does it not?
Mr. BUEHNER: Yes; San Francisco depends on the water. We have some very large buyers there. A lot of the buyers own their own steam schooners, and when they get the lumber down
248 there, they grade it and they virtually set the price or grade according to the capacity of the mill man to stand it, or his inability to kick.
Mr. COTTON: In the fall of 1903, was there not a slump in the general market all over the whole northwest?
Mr. BUEHNER: In 1904 there was a slump, and from my chart here I see it began in the fall of 1903.
Mr. COTTON: Was there not a general slump through the northwest at that time?
Mr. DILLARD: You say in the fall of 1903?
Mr. BUEHNER: Yes; in the fall.
Mr. COTTON: The rate was taken out on January 1st, 1904.
Mr. BUEHNER: Portland was taken out in August, 1903, and the very next month our prices dropped, according to this chart. I didn't know that when I made the chart.

Commissioner PROUTY: Was it in January the other rate was taken out?

Mr. TEAL: On January 1st, the Valley rate was taken out.

Mr. BUEHNER: And then she dropped a dollar and fifty cents in January. She dropped two dollars in August or during the month of September, and a dollar and a half during the month of January.

249 Mr. COTTON: Was there not a general slump on eastern shipments as well?

Mr. BUEHNER: Well, I was not in Portland in the fall of 1903, but the chart shows a big slump.

Mr. COTTON: This $5 rate, as I understand it, extends to points out of San Francisco as well as San Francisco?

Mr. BUEHNER: You mean Stockton and Sacramento?

Mr. COTTON: Yes.

Mr. BUEHNER: No; I don't know.

Mr. COTTON: What does it cost you to get lumber that you send down by cargo out to these points which are away from the bay?

Mr. BUEHNER: That depends on the location. We ordinarily figure about $2. That I had reference to before. We ordinarily figure about $2, in addition to the charter rate.

Mr. COTTON: I mean to points that are away from the Bay?

Mr. BUEHNER: That depends on the local out.

Mr. COTTON: What do you have to pay besides the local out? Any other additional charges?

250 Mr. BUEHNER: We have to pay for the loading on the cars and the switching charge, which all comes under this same expense, which is about a dollar and a half or two dollars, if we ship it out, or if we bring it into the yards, it all amounts to about the same thing, about a dollar and a half or two dollars.

Mr. COTTON: Then it takes about a dollar and a half or two dollars for you to get the stuff on the car, and then on top of that—that is a dollar and a half or two dollars a thousand?

Mr. BUEHNER: Yes, sir.

Mr. COTTON: And then on top of that you have to pay the local rate from a San Francisco Bay point to a point in the interior of California, north of 'Frisco, say?

Mr. BUEHNER: Yes, sir.

Mr. COTTON: And that is a burden which falls on you as a cargo shipper?

Mr. BUEHNER: Yes, sir.

Mr. COTTON: Now, on your clear lumber which you send down there, and which Mr. Booth sends down there—that weighs how much?

251 Mr. BUEHNER: If it is kiln dried and surfaced, which is what you mean, I suppose, by clear, it weighs about 2,000 pounds to the thousand feet.

Mr. COTTON: This No. 1 common which you send down there—what kind of stuff is that?

Mr. BUEHNER: That is rough green.

Mr. COTTON: Do you sell much kiln dried stuff, flooring and stuff like that down there—higher grades than No. 1?

Mr. BUEHNER: No. 1 common, you mean? We sell considerable No. 1 clear down there, and if we ship it by water we have to pay the same rate per thousand as green lumber. Of course if we ship it by rail, we get the benefit of the difference in weight.

Mr. COTTON: Do you send much of that higher grade lumber, that is dried down by cargo or by rail ro San Francisco?

Mr. BUEHNER: We would like to ship that by rail if we could get the cars. If not, we do ship it occasionally in the hold of a schooner.

Mr. COTTON: There is an objection to making a deck load of it, is there?

252 Mr. BUEHNER: Yes; it gets wet on the deck.

Mr. COTTON: Is there much shipment of that kind of material to San Francisco of that higher grade of lumber by anybody?

Mr. BUEHNER: Yes; there are big buyers. That is one of our best markets for high grade lumber.

Mr. COTTON: I mean better than No. 1 common, dry stuff?

Mr. BUEHNER: Yes, sir.

Mr. COTTON: That weighs no more than 2500 pounds or less per thousand?

Mr. BUEHNER: Yes sir; that is one of the best buyers of the trade.

Mr. COTTON: On that you pay at the present time $4.50 per ton, when it weighs no more than 2,000 pounds?

Commissioner PROUTY: Or $4.50 per thousand.

Mr. COTTON: Yes; or $4.50 per thousand, whatever its weight may be.

Mr. BUEHNER: When they take nice clear flooring strips and load than in a steamer, the way they put slings around it, they damage a great deal, and it is quite a loss, in shipping nice clear lumber by steamers; but we pay everything board measure by steamer.

253 Mr. TEAL: Mr. Buehner, we have all the same rate on this fine lumber, have we not, Portland and the Valley?

Mr. BUEHNER: Yes.

Mr. TEAL: There is no dispute about that.

Mr. COTTON: But I want to show that this great differential Mr. Teal comments on does not exist as to a large part of the shipments. Just take your shipments for example. What would you say would be the average weight of the shipments you make to San Francisco per thousand feet on different grades.

Mr. BUEHNER: The rate on green lumber is 3300 pounds, and quite a large amount of that goes in there. Probably of the total quantity that is shipped into San Francisco, I should say 50 per cent. I guess it is more than that. I will say 60 per cent., and the other would be kiln dried stock, weighing about 2,000 pounds.

Commissioner PROUTY: We know what this lumber weighs. We have had that a thousand times already, now.

Mr. COTTON: Are you sure that th's charge of $2 exists, that this extra additional expense of about $2 a thousand exists, as to all your shipments?

254 Mr. BUEHNER: No, it does not, Mr. Cotton. Some of the larger yards are right on the slip. It is only the man who is back from the dock and there are a great many yards in Oakland and other places.

Commissioner PROUTY: I understood you to say it was worth about $2 a thousand if you had the privilege of shipping by cars, as against a cargo shipment. Is that right?

Mr. BUEHNER: Where a big shipper buys——

Commissioner PROUTY: Never mind whether it is a big shipper or a small shipper. Take your business as a seller of lumber in San Francisco. How much a thousand feet is the privilege of shipping by carloads rather than by cargo worth to you?

Mr. BUEHNER: I will say easily a dollar and a half per thousand—easily.

Mr. COTTON: That is on what?

Mr. BUEHNER: On all grades of lumber; more on clear, of course, but it would average easily a dollar and a half.

Mr. DILLARD: If I understood you right, your rates began to drop about July, 1903?

255 Mr. BUEHNER: About August or September.

Mr. DILLARD: About August 1903, and the rate to Portland at that time was made $5?

Mr. BUEHNER: I think it was $5.

Mr. DILLARD: And the price was dropping in January, 1904?

Mr. BUEHNER: Yes; it dropped $2 in September, and a dollar and a half in January, 1904.

Mr. DILLARD: On the 1st of January, 1904, the rate from Willamette Valley points was raised to $5 per ton and so continued until May?

Mr. BUEHNER: Yes.

Mr. DILLARD: But notwithstanding that fact your price in Portland still continued to drop?

Mr. BUEHNER: Yes; that is right.

Mr. DILLARD: Did I understand you to say that one of your mills was built on the faith of this $3.10 rate?

Mr. BUEHNER: The Eastern was organized and commenced building in 1899.

Mr. COTTON: Did you have any correspondence with anybody who promised the continuance of these rates?

Mr. BUEHNER: No; my partner had a conversation with Mr. Markham. I was not present, though, at the time.

256 Commissioner PROUTY: That seems to be all.

Mr. TEAL: Just a question in response to what Mr. Cotton asked him. Mr. Buehner, are not the larger yards in San Francisco situated where the vessel loads right into the yard, like Long Wharf at Oakland?

Commissioner PROUTY: I do not think we will spend time on that, Mr. Teal. He has given his judgment as to the advantage it is to ship by carloads, and you know what his opinion is.

Mr. TEAL: Then I would like to ask one more question. In

speaking of the better grades of lumber, will you ship those by vessel if you can get a car?

Mr. BUEHNER: We prefer to ship them by car.

Mr. TEAL: And it is the same rate as the Valley rate.

Mr. BUEHNER: Whatever the rate is.

Mr. COTTON: This $4.47 cost is simply from out of the water through the mill, is it not?

Mr. BUEHNER: Yes sir! and including our fixed charges, taxes, insurance and depreciation.

Commissioner PROUTY: That is all with Mr. Buehner.

257 Whom will you call next.

Mr. ABEL: Call Mr. Poulsen.

J. POULSEN, a witness produced on behalf of the intervenors, being duly sworn, testified as follows:

Commissioner PROUTY: Mr. Abel, what do you propose to prove by Mr. Poulsen?

Mr. ABEL: Practically the same.

Commissioner PROUTY: We will not hear the details. We will assume that Mr. Buehner has told the truth about it. Let them dispute it on the other side. Unless Mr. Poulsen has some new facts to state, we decline to hear him.

Mr. POULSEN: I would like to state this, if you please——

Commissioner PROUTY: We cannot sit here for a month to hear this same story told over and over again.

Mr. POULSEN: But I would like to say that my opinion about the cause of the drops is entirely different from all the lumbermen here.

258 Commissioner PROUTY: The cause of what?

Mr. POULSEN: The cause of the drop in prices, this year as well as in 1903. I lay them to national causes, and not to any change in the freight rates.

Commissioner PROUTY: I think you stated that in your testimony in the other case.

Mr. ABEL: Do you know how the $3.10 rate came to be established?

Mr. POULSEN: Yes.

Mr. ABEL: Have you personal knowledge of that?

Mr. POULSEN: Yes sir.

Mr. ABEL: State it briefly to the Commission.

Mr. POULSEN: The Southern Pacific Railway Company, through their agent in Portland, Mr. Markham, went to the mills, and asked the mills there what rate they would have to give them, what rate the railroad would have to give them so as to compete with water rates, and we told them what was required. After some talk, they gave us that rate.

Commissioner PROUTY: I do not understand that there is any question at all but what the rate was made to meet the water

259 rate. That would be the only reason for it. What do you say the cargo rate has been from Portland to San Francisco for the last six years?

Mr. POULSEN: They have varied from $3.50 to $10.00.

Commissioner PROUTY: Laying out of account the very high cargo rates following the San Francisco fire, what have the cargo rates averaged?

Mr. POULSEN: I should say $4.25.

Commissioner PROUTY: What are they now?

Mr. POULSEN: I think the last was $4.75. They were down to $4.50 but advanced again.

Commissioner PROUTY: When you speak of a cargo rate of $4 or $4.50, do you include a towage charge to the vessel to the mouth of the river?

Mr. POULSEN: No; that is net.

Commissioner PROUTY: Do you pay that charge in addition?

Mr. POULSEN: The towage charge?

Commissioner PROUTY: Yes; the towage charge.

Mr. POULSEN: We do not. We sell all our lumber on dock. We don't sell delivered in San Francisco as a rule.

Commissioner PROUTY: When you say the cargo charge
260 is $4, is that the total charge which the shipper has to pay?

Mr. POULSEN: I said $4.25.

Commissioner PROUTY: Well, $4.25.

Mr. POULSEN: Yes; that is the total.

Commissioner PROUTY: That is the total cost?

Mr. POULSEN: Yes sir.

Mr. ABEL: Mr. Poulsen, in your judgment should Portland have as low a rate as or a lower rate than the upper Willamette Valley?

Mr. POULSEN: In my judgment they should have a lower rate, on account of having water competition; but we would be satisfied with the same rate.

Cross-examination:

Mr. COTTON: Mr. Poulsen, about this towage and pilotage of vessels. Does that relate to steam or to steam sail boats?

Mr. POULSEN: The towage that was spoken about here before I think only relates to sailing.

Mr. COTTON: On sailing vessels you do what, with reference to pilotage and towage?

261 Mr. POULSEN: We don't do anything. We sell our lumber on our docks.

Mr. COTTON: I mean whoever pays the charter rates?

Mr. POULSEN: Well, you can charter sailing vessels both ways—either say the mill pays it or that the vessel pays it, but the result would be the same.

Mr. COTTON: And that increased charge for towage is estimated to be about what per thousand feet?

Mr. POULSEN: Well, the towage is half a dollar.

Mr. COTTON: Half a dollar per thousand.

Mr. POULSEN: Yes sir.

Mr. COTTON: These rates of $4.25 and $4.75 cents are steam schooner rates?

Mr. POULSEN: Yes sir.

Mr. COTTON: And so a sailing schooner would be higher than that, would it, or lower?

Mr. POULSEN: Very near the same. As a rule, they are a little lower, but not much.

Mr. COTTON: Do these go out in complete cargoes or broken up stuff?

Mr. POULSEN: Both ways.

Mr. COTTON: In saying that you think Portland ought
262 to have a lower rate, do you mean they should have a lower rate than a $3.10 rate?

Mr. POULSEN: I mean they should have a lower rate than the inland people, on account of having water competition.

Mr. COTTON: But you do not express your opinion about the reasonableness of the rate?

Mr. POULSEN: No sir.

Mr. ABEL: He was not asked that.

Mr. COTTON: That is what I understood, but I just wanted to make it clear.

Mr. POULSEN: No.

Mr. TEAL: The greater proportion of the cargo shipments from Portland are steam schooners, are they not?

Mr. POULSEN: Yes sir.

Mr. TEAL: And when anyone speaks of making a charter, the charter party covers the total cost that is paid the vessel, does it not?

Mr. POULSEN: Steam schooners, yes.

Mr. TEAL: But for any vessel?

Mr. POULSEN: No. That is, the charter party generally
263 says whether the charter shall pay the towage or whether it is a net price.

Mr. TEAL: And the prices you refer to were for steam schooners, were they not? You have just given some prices.

Mr. POULSEN: Yes sir.

Mr. COTTON: You ship all grades of lumber to San Francisco, or only common?

Mr. POULSEN: All grades.

Mr. COTTON: High, low and all classes.

Mr. POULSEN: Yes sir.

Mr. COTTON: It is a good market for high grade stuff?

Mr. POULSEN: Yes sir.

Mr. COTTON: You agree with Mr. Buehner in that part of his testimony?

Mr. BUEHNER: Yes sir.

Mr. COTTON: That is all.

Mr. ABEL: That is all on behalf of the intervenors, if the Commission please.

Commissioner PROUTY: Mr. Teal, you may proceed.

264 Mr. TEAL: I want to shorten it as much as I can.

Commissioner PROUTY: You need not introduce any witness who will simply repeat what Mr. Booth has already said. Mr. Booth was one of the earliest operators in that section. He has told the whole story. This is a very important matter, and we are

anxious to get at every fact which bears upon the disposition of it; but it does not in any way help the Commission to hear that same story told half a dozen times by half a dozen different men. Produce any witness who has any new facts to state, but do not go over the same ground with any additional witness.

Mr. TEAL: I will not, and I did not intend to.

Mr. COTTON: There is nobody else who can refer to any contract?

Commissioner PROUTY: I do not think Mr. Booth referred to any contract.

Mr. COTTON: I mean any understanding, even.

Mr. TEAL: I have witnesses——

Commissioner PROUTY: I do not think Mr. Booth testified to any understand- which could be regarded in the light of a contract or in estoppel, or anything of that sort, except insofar as the railroad company which puts in effect and maintains in effect a certain
265 rate may be held to be, in a sense, estopped, or excluded from changing that rate after an industry has been built up and strengthened.

Mr. TEAL: That is all I have ever claimed for it, and I have other witnesses to the same effect, but I did not intend to introduce them for the same purpose. Will you permit me to ask you one question, your Honor? It will shorten it.

Commissioner PROUTY: Yes.

Mr. TEAL: Does the Commission care to hear any more testimony as to the establishment of mills since the date about which Mr. Booth has testified?

Commissioner PROUTY: I think you should inform us how many mills there are in this valley, and about when those mills were constructed and came into operation.

Mr. TEAL: I will do that, very briefly.

Commissioner PROUTY: And whether the owners of the mills own their lumber, when they bought the lumber, and facts of that kind.

Mr. COTTON: The only reason I suggest that other question is that I see other gentlemen in the room who tell entirely different stories from that of Mr. Booth.

266 Mr. TEAL: I would be very glad to have them called. If they are important witnesses, call them.

Commissioner PROUTY: There does not seem to be much question about why these rates were established. It is perfectly apparent that no one can operate in the Willamette Valley unless they have a rate which is competitive with the water rate. These rates were undoubtedly established in competition with water, in order to enable that valley to do business.

Mr. TEAL: I will show that by their witnesses, before I get through.

Commissioner PROUTY: If that is not so, the facts will develop as we proceed with this case.

A. C. DIXON, a witness produced on behalf of the complainants, being duly sworn, testified as follows:

Mr. TEAL: Mr. Dixon, will you please state to the Commission the number of mills there are in the Willamette Valley Dis-
267 trict covered by the rate as it existed just prior to April 28, 1907?

Mr. DIXON: Approximately 250.

Mr. TEAL: Will you state as nearly as you can substantially the amount of their total capacity?

Mr. DIXON: The total capacity is about 4,522,000—four million and a half in round numbers.

Mr. TEAL: The output, of course, you do not know?

Mr. DIXON: That varies from time to time.

Commissioner PROUTY: How much would that figure up a year, Mr. Dixon?

Mr. DIXON: Four and a half million feet a day for 250 working days. It would be about 1,100,000,000, in round numbers.

Commissioner PROUTY: How much lumber was ever sawed in any one year by these mills?

Mr. DIXON: Well, approximately, as near as our records determine, from the investigation I have conducted, half of their capacity. I don't believe the average runs over half of their maximum capacity.

Commissioner PROUTY: Six or seven hundred millions a year?

268 Mr. DIXON: Yes; that is about right—about 600 million.

Commissioner PROUTY: How much of that lumber was shipped out of the country, and how much of it was sold in the country, in the Willamette Valley?

Mr. DIXON: I couldn't tell you definitely about that, only in a relative way. There was more shipped out and less of it used locally than was shipped out and used locally by the mills of Oregon as a whole, for two reasons: One, that they had no other outlet. I mean more shipped by rail. One, that they had no other outlet, and the other that the local consumption would not be as great around the small towns and mill communities as it would be in Portland and the larger towns.

269 Commissioner PROUTY: So you say that, of this six hundred millions, four hundred millions and over was shipped out?

Mr. DIXON: I think so, for the reason that our records show that of the total production of the State one-half was shipped out. That corresponds with what I stated awhile ago, that there would be more shipped out and less used in the valley than in other places.

Commissioner PROUTY: It would follow then that your company shipped about one-fifth of all that was shipped out.

Mr. DIXON: I think that is about right; one-fifth or more.

Commissioner PROUTY: Do you think the relative movement to the south and to the East was about the same in the case of all the mills as it was in the case of your mills?

Mr. DIXON: No; the smaller mills further to the south would ship

more to the South and the larger mills further north would ship more to the East.

Commissioner PROUTY: How do these small mills sell their product; do they sell it to a commission man or to one man?

270 Mr. DIXON: No; very few of them sell to one man, who handles the cut of the mills. They sell largely to commission men, however, and to railroad purchasing agents direct.

Mr. TEAL: I wish you would explain to the Commission how the small men, who has not his own planers and cannot dry kiln his lumber, is up against it by reason of this San Francisco rate.

Mr. DIXON: I can best illustrate that by citing an instance with regard to one of our own mills, which had been a rough lumber mill until the last two or three months. We took our dry kiln and planer out, intending to make it a rough lumber mill, and shipped our rough side lumber, our No. 1 and No. 2 cut, to the California markets, thinking that we would never need the planer or a dry kiln there, for the reason that we had hardly any clear in the timber.

This spring, when the rate was changed, we found that we had no market for our rough lumber and had to put in a planer and a dry kiln again, at the expense of a good many thousands of dollars, in order to surface this lumber, and to ship at least a part of it to other points. The small mill men with whom I am familiar

271 and the mills in there without the planers simply have their accumulation of lumber on hand.

Mr. TEAL: Do those mills ordinarily saw to orders or standard lumber?

Mr. DIXON: Practically all the mills in Oregon cut to order. Pretty nearly all the Oregon pine is sawed to order.

Mr. TEAL: How about fir?

Mr. DIXON: When I say pine, I mean fir. That is the trade name. I meant to distinguish it from eastern Oregon pine, which is a real pine lumber, and is somewhat similar to the white pine.

Mr. TEAL: How much of the cut will be applied on orders and how much on side lumber?

Mr. DIXON: I have said that a sawyer was doing good work if he could get fifty per cent. of his lumber to apply on orders, on an average, and he would have a lot of side lumber left.

Mr. TEAL: That has to be marketed at some place?

Mr. DIXON: Yes sir.

Mr. TEAL: Where has been the market for the smaller mills for this side product that is not contracted for?

272 Mr. DIXON: It has largely gone into the California market, and into the San Francisco territory. In our case, some of it has been surfaced and forced into the eastern market.

Mr. TEAL: What about the smaller mills which have not planers and dry kilns?

Mr. DIXON: The small mills which have not planers are a good deal dependent on consumption in California for their markets, and the large consuming center there is San Francisco.

Commissioner PROUTY: Do your mills ship East?

Mr. DIXON: As a rule, they do not. Yon may say they do not

ship East at all. They do not ship any rough side lumber East, because it would not stand the freight rate. They do not ship some timbers, but a very small amount.

Mr. TEAL: Mr. Buehner has stated that, in his judgment, on cargo shipments to San Francisco the cargo shipper would be put to an additional cost of a dollar and a half, on an average, as against the rail shipper to those points. Will you explain to the Commission whether or not, in your opinion, that is too high; and if it is state what you think the proper amount is and why.

273 Mr. DIXON: I would not want to say what the proper difference should be; but if there is any, it seems to be to be markedly in favor of the cargo shipper, and for a number of reasons. One reason is that the cargoes, especially those shipped in Bay points, are what are called random cargoes. They do not call for any specific number or any specific size or length, but they do include just about the usual random stock that you would find in any lumber yard. I have seen a number of the charters and a number of the orders for cargoes, and in our yards it would amount to going right into the yard and taking everything you come to until you get a ship load.

Our car orders, as a rule, state so many pieces or so many feet of a certain size, and the different sizes and lengths. There would be fifty different sizes in a car. That is about the average, although I have seen seventy-five different items in one carload. There are always a dozen or so different items, with specific lengths, sizes and grades. It is unquestionably a great deal more expensive to go to work and sort out fifty carloads of lumber of twenty thou-

274 sand feet each, and make each car fit a certain specification, than it is to load fifty carloads or one million feet into the hold of a schooner on a dock.

Commissioner PROUTY: That is undoubtedly so; but could you not get a better price for the lumber which you sent by carload than you get for that which you send in the schooner, for the very reason that it costs you more to put it on the car and get it there?

Mr. DIXON: The fact that it costs more to put it on the car, does not make it worth any more to the consumer.

Commissioner PROUTY: One witness testified that he had sold ten million feet in San Francisco for eight to ten dollars a thousand feet at the mill, and he made that low price because he got a sale for so large a quantity of lumber. Could you not, as mill men, get a much better price if you delivered a man just what lumber he wanted than you could if you sold him a whole cargo or a million feet, just as you take it from your yard?

Mr. DIXON: If we could deliver him the lumber just as he wanted it, we could get a somewhat better price; but the advantage of

275 which I was going to speak, in loading the schooner, is that the schooner is there and getable and they can load it. Of course, that brings in the question of car shortage.

Mr. TEAL: What does the dollar and a half extra charge at San Francisco cover; is it some sort of an unloading charge?

Commissioner PROUTY: I do not think he claims this to be any such charge as that; but he claims that the advantage to the carload

shipper is because he can meet the necessities of his customers. There are certain charges at San Francisco. The lumber has to be taken from the dock and brought into the yard, and it has to be taken and loaded on to the car; but still the great advantage is in being able to supply this customer with exactly what he wants.

Mr. DIXON: I have had a great deal of experience in selling in the San Francisco market and have sold some random stock, similar to what is loaded on schooners. So far as my memory goes, whenever I have sold random material, I have had to meet the cargo price.

Commissioner PROUTY: Was not the cargo price lower than your carload price?

Mr. DIXON: Not when I sold randoms. When, for in-
276 stance, I sell one hundred thousand feet of one inch stock, without any specification as to size or length, the same as a schooner cargo, I have always had to meet the the cargo price, with the exception probably of fifty cents a thousand feet. I do not think there has ever been any more difference than that. When we do sell a cargo of specified sizes and lengths, we get more money than the cargo shipper gets for his random cargo; but in my opinion no more than he would get for a load of specified sizes and lengths, which would correspond to our carloads.

Commissioner PROUTY: Do you know anything about how much standing lumber is in Willamette Valley at the present time?

Mr. DIXON: I know approximately what there is in western Oregon, from the Government reports only.

Commissioner PROUTY: Is there not a good deal in the Willamette Valley?

Mr. DIXON: There is in the tributaries to the Valley. In the Valley itself there is, of course, very little; but on the edge of the Valley and on the slope on each side, there is a very large growth of standing timber.

277 Commissioner PROUTY: As that timber is logged and cut up at the present time, is it worked up pretty closely or is a great deal of it wasted?

Mr. DIXON: That varies with the market. At the present time—and I am speaking now of the time before conditions changed, say three months ago—we are working up our timber much closer than we did at any other period, since I have been familiar with the operations.

Commissioner PROUTY: What effect will be produced on your business if this San Francisco rate should be restored and your eastern rate would be withdrawn, or there should be given a five cent arbitrary above Portland?

Mr. DIXON: Our statement shows the proportion of our eastern shipments, and any arbitrary against that would decrease those shipments. I would suppose that a five cent arbitrary would result in decreasing our operations at least one-half. The opening of the San Francisco market, on the other hand, if cars were furnished, would result in our marketing our low-grade product which we have been accumulating for the last year, and would probably take care

of a low grade product from our operations, at one-half of the present rate.

278 Commissioner PROUTY: Would a rate of say four dollars a ton do you any good in the San Francisco market, as against cargo rates?

Mr. DIXON: At the present time it would not.

Commissioner PROUTY: At the present time there is no market for lumber, anyway; is there?

Mr. DIXON: I do not mean to take an extreme. With prices normally low, it would not because it would leave a dollar and a half against us. I just figured it at ninety cents, and we would not be able to absorb a dollar and a half on our common lumber to anybody.

Commissioner PROUTY: How much does stumpage sell for in Willamette Valley at the present time, when people buy it?

Mr. DIXON: I think the real price is about one dollar a thousand.

Commissioner PROUTY: And you charge yourself fifty cents stumpage?

Mr. DIXON: Yes sir.

Commissioner PROUTY: Do you think on that basis you could not sell lumber profitably in San Francisco under a four dollar rate?

279 Mr. DIXON: I am considering now the average normal conditions for the last three or four years; and I would say no.

Cross-examination:

Mr. COTTON: Mr. Dixon, I would like to have considered in evidence the cost prices which you prepared for 1905 and 1906 in the eastern case. I understand they cover your production, no matter where the lumber goes.

Mr. DIXON: That is correct; yes sir.

Mr. COTTON: That did not relate simply to the eastern production?

Mr. DIXON: No; that was our average cost.

Commissioner PROUTY: I think that in discussing this case you should be allowed to refer to any testimony that was taken in the other case.

Mr. COTTON: The only difficulty about that is that I do not want to go into the matter of earnings in this case, because that will prolong the hearing indefinitely.

Mr. TEAL: The earnings about what?

Mr. COTTON: I do not want to waste too much time on this proposition, because I think this is a case of purely competitive conditions.

280 Commissioner PROUTY: It is a case of purely competitive conditions so far as this rate is concerned; but when it comes to saying whether you should be permitted to make that rate, then it becomes a question of cost to a certain extent; would it not?

Mr. COTTON: Then we may have to take sometime and go into the question of cost. I merely want to know what the issues are, before we close our evidence.

Commissioner PROUTY: It has occurred to me that if you had made this rate and maintained it for a long time and should continue to maintain it with a reasonable profit, you might be obliged to do so; whereas you ought not to be required to maintain it if you made practically nothing out of the business. In other words, it would make a difference, in my opinion, as to whether this was a fairly good business on the $3.10 or the $4 or $5 rate, or whether there was no money in it at all.

Mr. COTTON: These mills are located down in the vicinity of Eugene; are they not?

Mr. DIXON: Yes sir.

Mr. COTTON: The Coburg and Saginaw mills?

Mr. DIXON: Yes sir.

281 Mr. COTTON: You say there are how many mills doing business in the Willamette Valley, and are they members of your Association?

Mr. DIXON No; they are not members of our Association; but they are mills whose names appear on the lists we have prepared, and are operating within the confines of the Willamette Valley.

Mr. COTTON: They are all practically north of you?

Mr. DIXON: The bulk of them are north of us.

Mr. COTTON: And they are more poorly situated so far as you are concerned. How many of them are there in the valley?

Mr. DIXON: About 250.

Mr. COTTON: I have a list you prepared in August, 1906, which only shows 92.

Mr. DIXON: Who prepared it?

Mr. COTTON: It is supposed to be a list of the shingle mills that were really doing business with the railroads, and it only shows 92 mills in this $3.10 district when you think there are 250 now.

Commissioner PROUTY: Does that include both lumber and shingle mills?

Mr. DIXON: I can give you the names of 250 mills in the

282 Willamette Valley.

Mr. COTTON: And their addresses?

Mr. DIXON: Yes; although I will not be sure about their post-office addresses.

Mr. COTTON: I would like to have the names of the mills and the nearest shipping point. You have a list of that kind already made; have you not?

Mr. DIXON: Yes sir.

Mr. COTTON: I do not want a man to take the time to write out 250 names; but if you have it will you file it?

Mr. DIXON: I have it.

Mr. COTTON: Then we will file it. Now about the capacity of these 250 mills. They only cut about four or five times as much as your three mills; do they not?

Mr. DIXON: Their average capacity is about seventeen thousand feet to the mill, and I do not know how many of them it would take to cut as much as we do; but you can figure that out.

Commissioner PROUTY: When you seventeen thousand feet, you mean seventeen thousand feet in ten hours?

Mr. DIXON: Yes; and a great many of them are small mills.

283 Mr. COTTON: The very great majority of them are small mills?

Mr. DIXON: Yes sir.

Mr. COTTON: How many of them do you think would run less than thirty thousand per day?

Mr. DIXON: The list will show that exactly.

Mr. COTTON: Have you got a capacity list?

Mr. DIXON: Yes; that is why we got it.

Mr. COTTON: They are all north of you?

Mr. DIXON: No; there are a good many of them south of us.

Mr. COTTON: But in the Valley?

Mr. DIXON: In the Valley—all these 250.

Mr. COTTON: But a large majority of the 250 are north of you?

Mr. DIXON: Yes; I think the majority of them are north of us.

Mr. COTTON: There are two hundred at least north of you?

Mr. DIXON: No; not that many. Nothing like that many.

Mr. COTTON: About how many are north of you?

Mr. DIXON: The list also shows that. They are divided

284 up by counties in that list, and I should prefer not to testify about it, as I have never taken the pains to verify it.

Mr. COTTON: Can these men live and pay a higher rate than you pay to San Francisco?

Mr. DIXON: Do you mean as much higher a rate as this difference?

Mr. COTTON: No; say ten cents a thousand or five cents a thousand.

Mr. DIXON: Why, I presume they could. I don't think ten cents a thousand would stop them from living.

Mr. COTTON: Would ten cents a hundred pound stop them from living?

Mr. DIXON: It would stop them from selling lumber at a profit, if I am correctly advised about the cost and the selling price.

Mr. COTTON: Then you think that if they had to pay ten cents per hundred, they would have to go out of business?

Mr. DIXON: They would have to go out of business in the San Francisco market, I should think.

Mr. COTTON: A majority of these small men have no other market except San Francisco and the local market?

285 Mr. DIXON: For their low grade side lumber.

Mr. COTTON: The large majority of these little fellows do no business at all with us.

Mr. DIXON: No; I think the majority of the smaller mills do not.

Mr. COTTON: So if you made a graded rate from Portland down to San Francisco, and that varied ten cents a hundred pounds, practically all the mills that would have to pay the ten cents higher rate than you would, would have to quit?

Mr. DIXON: What do you mean by a graded rate—getting less as you go south?

Mr. COTTON: Yes; I mean anything other than a blanket rate.

Mr. DIXON: Well, I think it would work a very great hardship to the mills that would have to pay the ten cents extra.

Mr. COTTON: It would mean three dollars to the thousand feet, and if you cannot do business under it these little fellows are not situated so that they can stand any more than you could stand.

286 Mr. DIXON: We can probably do business; but we would have to restrict our output, and instead of running four mills, run one. If they could cut down their output so as to only fill the local consumption, they might manage to wiggle along.

Mr. COTTON: With a graded rate they would have to take care of their little local consumption out in the woods, which practically means to use a team and haul lumber for a few farmers.

Mr. DIXON: That varies with the situation and conditions.

Mr. COTTON: I am now talking about these small people and not these larger ones. I am talking about these two hundred men that we have in our minds most of the time.

Mr. DIXON: Under a graded rate to San Francisco, these small mills would either have to reduce their cost of operation or enlarge their market in some way. I don't know what they could do; but I am pretty well satisfied as to what we can.

Mr. COTTON: You know as a matter of fact, do you not, that Mr. Miles and Mr. Buehner and Mr. Poulsen can do very much better than they can on any such rate, and that none of these men could

287 compete as against you on the one hand or as against Poulsen on the other. They do not compete with you now on an even basis, do they? They labor under disadvantages, do they not?

Mr. DIXON: Some of them manufacture cheaper than we do; but I think as a rule their lumber is not quite so well manufactured.

Mr. COTTON: Some of the stuff that you buy from some of these small mills you could hardly nail together?

Mr. DIXON: I would not say anything of that kind.

Mr. COTTON: They do run very irregularly. Now suppose we met water competition at Portland and then grade it up, and undertook to take the lumber out in that direction on anything other than a blanket rate, which went all the way down, the little boys would have to stop; would they not?

Mr. DIXON: Do you mean that you ship lumber via Portland?

Mr. COTTON: Yes; if we met water competition from Portland and then based Portland to San Francisco, to go out by rail, and based Portland to meet the water competition rate——

Mr. DIXON: And add the local?

Mr. COTTON: What is the local rate on lumber from Salem in?

288 Mr. DIXON: I think it is four cents, if I remember correctly. Mr. Miles can tell you about that.

Mr. COTTON: If we should make the water competition rate at Portland and then grade it up, and this Commission should

sustain even a five cent rate, these little boys would suffer a very great hardship.

Mr. DIXON: It would work a very great hardship to them; but you cannot tell what a man can stand until you put him to the test. Some of them might manage to get along where others could not.

Mr. COTTON: I entirely agree with you in that remark, because I think we are all making more of a hardship out of this matter than, possibly, is necessary. It is true that all of these small mill men have got to be placed on an equality, from one end of the valley to the other, with you on the one side, and Miles, Buehner and Poulsen on the other, in order that they may have even a half way chance to live. Is not that right?

Mr. DIXON: They all need the same rate to the same points, in my judgment, in order to have a fair chance to do business.

Mr. COTTON: So that really, in order to enable the Willamette Valley to do a lumber business, there ought to be a blanket
289 both west and east, in practicaly that whole territory where we have made a blanket. Is not that about right?

Mr. DIXON: Well, we are used to working under the rates that have been in effect, and we have not been able to find out how to do without them. If there is any other way, I do not know it. You can call it a blanket or anything else you please.

Mr. COTTON: Take the case of Mr. Miles. As I understand it, he pays more for his timber than you pay.

Mr. DIXON: I do not know.

Mr. COTTON: I understand from his testimony that he did. He is located at Salem, which is on the main line of the Southern Pacific. Then he has a mill out here at Dallas, which is over here on a branch, on this extreme west side. He gets his lumber out on what we call the West Side Road.

Mr. DIXON: I think so; I have never been to Dallas, but that is my understanding of it.

Mr. COTTON: This road has a comparatively small tonnage.

Mr. DIXON: I could not say as to that.

Mr. COTTON: Suppose that on the eastern stuff he had to
290 pay more than he does, to the extent of five or ten cents a hundred pounds, could he live?

Mr. DIXON: I do not think the question of his living would enter into it; but he could not operate properly. He would be at a disadvantage.

Mr. COTTON: He is away over here on this Corvallis line, on this branch line of the Southern Pacific, and in order to get over to the main line he has got to have his lumber hauled over to Albany, and then down past your place to Eugene.

Mr. DIXON: Yes.

Mr. COTTON: And if he were charged five or ten cents more on his San Francisco business, he could not compete with you in San Francisco; could he?

Mr. DIXON: He could not get the same results. I do not know whether he could compete or not.

Mr. COTTON: Do you think that he could compete?

Mr. DIXON: I understand that he does have a slight differential there now, and he is competing with us. I think he pays a somewhat higher rate than we do.

Mr. COTTON: You mean to San Francisco?

Mr. DIXON: I think so.

Mr. COTTON: It is marked as within the territory.

Commissioner PROUTY: Is there not a twenty-five cent
291 differential on the west side?

Mr. MILLER: The rate is just the same for all of that territory.

Commissioner PROUTY: It is now, but when the $3.10 rate was in effect, was there not a 25 cent differential on the west side?

Mr. MILLER: The rate on the west side was 25 cents per ton higher.

Mr. COTTON: If he paid five or ten cents per hundred pounds more than you do, he could not compete with you, because his lumber is no better than yours; is it?

Mr. DIXON: I think it is about the same.

Mr. COTTON: The evidence shows that his stumpage costs him more. Now, Mr. Dixon, do you not think that it is an advantage to keep all these mills in operation and have blankets both ways, rather than to have graded rates both ways?

Mr. DIXON: As far as our mills are concerned, it is always to our disadvantage if we have a higher rate than a competitor, whether it is a blanket rate or any other charge against us.

Mr. COTTON: In the way the rate situation is adjusted now,
292 everybody who is manufacturing lumber south of Portland has got practically the same rate to every point and place in the United States that anybody else can reach. That is, all of the miles south of Portland have the same rate which the other has east and west.

Mr. DIXON: That is, the mills in Oregon, south of Portland, have the same rate to every place they can reach.

Mr. COTTON: Yes.

Mr. DIXON: I think that is true, except for the differentials that have been introduced. We have an arbitrary from one of our mills.

Mr. COTTON: That is practically a logging road and was built into your territory to accommodate this especial purchase of lumber.

Mr. DIXON: There never have been any logs hauled on the road.

Mr. COTTON: It was built for the purpose of cutting and handling your timber.

Mr. DIXON: I think so.

Mr. COTTON: And if that road had not been built, you would have to build one in order to operate the Wendley Mill at all;
293 would you not?

Mr. DIXON: We would have had to have a road.

Mr. COTTON: Do you think you could change that system by establishing anything but a blanket rate without putting a very great burden upon all these mills that are in between Portland and your mills?

Mr. DIXON: I think that any change in the rates would put at a

disadvantage that mill which had the highest rate at that point, if they were shipping by rail.

Mr. COTTON: All of these 250 odd mills in this Valley are rail shippers; are they not?

Mr. DIXON: I think perhaps there are some of those mills that do not ship much by rail; but my impression is that the large majority of them do have access to rail shipments.

Mr. COTTON: They have no other method of shipment except by rail?

Mr. DIXON: Practically none. There are some of them around Salem that ship a little by barge, but none of any consequence.

Mr. COTTON: They barge into what point?

Mr. DIXON: I do not know. I have just seen some barges
294 in the river there at Salem which I understood were prepared for lumber shipments.

Mr. COTTON: Then they pay the barge rate, in addition to the Portland rate?

Mr. DIXON: I do not know the method of shipment, or if there is any shipped by water.

Mr. COTTON: It would follow, as a matter of fact, that if the $3.10 rate, or any lower rate than the barge rate was established, that it ought to be extended all the way up to Portland; would it not?

Mr. DIXON: Personally I have no objection to that; but I do not see that it would necessarily follow.

Mr. COTTON: I am not considering your standpoint. I merely want your best opinion with reference to the industry in western Oregon.

Mr. DIXON: I think, Mr. Cotton, that the arrangement in effect prior to April 18th was, from the standpoint of the lumber shippers, a fair arrangement.

Commissioner PROUTY: How can you justify leaving Portland out of the San Francisco rate and taking you into the eastern rate?

Mr. DIXON: The Portland mills have so much the advantage of us in almost every other branch of the business that I do
295 not see how it is unfair to them to give us what might appear to be a slight advantage in one particular. In other words, they have a better grade of logs, they have a better market and more markets, they have a place to dispose of their refuse, and, what counts for more than anything else and is absolutely necessary to the successful conduct of the lumber business, they can get rid of their output, while we cannot, up to date.

Mr. COTTON: Why can they get rid of their output and you cannot?

Mr. DIXON: Because they are located at a competitive point.

Mr. COTTON: In what way?

Mr. DIXON: They have access to two different lines of railroad, and in some cases I think perhaps three, although I am not familiar with the Great Northern tariff.

Mr. COTTON: None of those mills, as a matter of fact, ship out of Portland by the Northern Pacific; do they?

Mr. DIXON: They have the rate. I do not know whether they ship or not.

Mr. COTTON: You know, as a matter of fact, that there is
296 not a mill in Portland which ships lumber east on the Northern Pacific, and has not for the last two years.

Mr. DIXON: No; I do not know that as a matter of fact.

Mr. COTTON: Do you not know that during the whole period of the congestion, the Northern Pacific was not seeking for lumber at Portland, when they could not haul their own lumber out?

Mr. DIXON: I was under the impression that they did haul some lumber from there; but I am not positive about that. I never examined the record. I know they have a rate from there, and they also have a rate into Idaho, and the large consuming territory of eastern Oregon and eastern Washington, which we do not have. I found a record of 2600 cars last year, which went into Idaho.

Mr. COTTON: Where did it come from?

Mr. DIXON: It went from Huntington, I think.

Mr. COTTON: Is there not lumber all up through the Blue Mountains?

Mr. DIXON: A great deal of it, to my knowledge, came from Portland, because I know of their shipping in there, and I
297 think that in two or three instances they absorbed the differential and shipped a few cars in there.

Commissioner PROUTY: Mr. Cotton, I do not think we need to spend any time on that point.

Mr. COTTON: But there is lumber in that region?

Mr. DIXON: There is no question about that; but there is some that goes from Portland into that territory.

Mr. COTTON: Do you know to what extent?

Mr. DIXON: No; I do not.

Mr. COTTON: It is very little; is it not?

Mr. DIXON: I thought it was rather a good market for them. I thought they consumed a few hundred carloads a year.

Mr. COTTON: Your idea is that this rate ought to be extended to Willamette Valley points right up to Tualatin, and then break off and jump up higher—or is it your idea that Portland ought to be entitled to the same rate that you get?

Mr. DIXON: I have not attempted to analyze the situation from a traffic standpoint. I told you my views from the standpoint of a lumber manufacturer in the Willamette Valley. As to the traffic phase of it, I think the Commission is a better judge than I am.

298 Mr. COTTON: It ought to extend up to at least ten or twelve miles of Portland; should it not?

Mr. DIXON: If I were to draw the line there, feeling as I do at present, I would except the mills that have other outlet than the Southern Pacific. I think that is only a fair offset for the advantage they have in other markets.

Mr. COTTON: The only mills that have any other outlet are those that are located right in Portland. Is not that right?

Mr. DIXON: Is that a question?

Mr. COTTON: Yes.

Mr. DIXON: I think so.

Mr. COTTON: Then in order to prevent doing an injury to the mills in the Willamette Valley, any rate which is made for you should necessarily be made to within ten or twelve miles of Portland, at least?

Mr. DIXON: I would make a rate to include those mills that have no other outlet than the Southern Pacific.

Mr. COTTON: Will you answer my question? In order to prevent doing an injury to the mills in the Willamette Valley, the same rate which is given to you would have to be carried right up to the border of Portland, at least?

299 Mr. DIXON: I would apply it to the mills in the Willamette Valley.

Mr. COTTON: But in order to prevent injury to the mills in the Willamette Valley, it would have to be carried up nearly to Portland, at any rate?

Mr. DIXON: If it did not reach them all, it would injure those that were left out.

Mr. COTTON: And in order to prevent injury to the eastern shippers, any rate which we make from Portland ought to be extended south to all the mills in the Willamette Valley?

Mr. DIXON: I think we should be kept on the same parity with Portland that we were when we established our mills.

Commissioner PROUTY: You had no eastern rate when you established your mills.

Mr. DIXON: During the time when we had done most of our improvements in enlarging our mills, and I think from the time we built the first mill, we had an eastern rate.

Commissioner PROUTY: It was stated that you were only put on a parity with Portland in 1900 and 1901. Is that correct?

300 Mr. DIXON: That is when we had the same rate as Portland via Portland. But prior to that date we had a large territory in Arizona and Colorado. But that was taken away, the market was closed and the other given to us.

Mr. COTTON: Do you not ship into Arizona now?

Mr. DIXON: I do not think we ship five cars a year there.

Mr. COTTON: Or to Nevada?

Mr. DIXON: We have shipped quite a good deal into Nevada in the last year and a half I should say.

Mr. COTTON: You are not quite out of that market?

Mr. DIXON: Just now we are entirely out of it.

Mr. COTTON: Why?

Mr. DIXON: The charter rate is so low that they ship to the California coast points and use the local from there across, which is less than our through rate.

Mr. COTTON: That is due to market conditions on account of the charter rate?

Mr. DIXON: I think it is largely because the charter rate plus the local is less than our through rate.

Mr. COTTON: Do you think that we ought to go chasing after this

charter rate, or that it is better for this road to establish a fair
301 price and keep it.

Mr. DIXON: I think that if the rail rate was fi- at about the average of the charter rate for the time that you have a record of it, it would be about the right thing.

Mr. COTTON: I asked you whether you think we ought to take some permanent position and stay there, rather than to keep chasing after the charter rate.

Mr. DIXON: I think the Commission ought to fix a rate and leave it.

Mr. COTTON: Last year, when the Portland mills were paying eight and nine dollars a thousand feet, your $3.10 rate continued and you shipped quite largely under it; did you not?

Mr. DIXON: The rate continued; but we shipped very little.

Mr. COTTON: How many cars?

Mr. DIXON: During what period?

Mr. COTTON: In 1906, and up to the time that the rate was taken out, how many cars did you send South?

Mr. DIXON: That is all introduced in evidence. I have no figures now.

Mr. COTTON: You have not figured that?

302 Mr. DIXON: I did figure it and the stenographer has the evidence, I think.

Mr. TEAL: The complainants in this case have no objection whatever, if the Commission sees fit, to the granting of the prayer of the petition of intervention, for Portland to have the same rate. That has been out position all the time.

I will now call Mr. Miles.

B. C. MILES, a witness of lawful age, produced on behalf of the complainants, being duly sworn, testified as follows:

Mr. TEAL: The other testimony of Mr. Miles may be considered as in evidence.

Commissioner PROUTY: Yes.

Mr. TEAL: Mr. Miles, will you please state, if you know, to what extent the Valley lumber men own their own timber, and, within your knowledge, how they operate and the price they pay for stumpage?

Mr. MILES: Of course, that varies. The small mill men usually, if they can, will buy 40 or 80 or 160 acres of timber land and will put in a little mill and take the timber off.

Mr. TEAL: And the others buy considerable quantities?

303 Mr. MILES: The others buy in a large amount of timber and build their mills, and figure for operating more permanently.

Mr. TEAL: How are you situated?

Mr. MILES: We have purchased our own timber lands quite largely and have undertaken a plan for operating for a series of years.

Commissioner PROUTY: How much timber land do you own?

Mr. MILES: We have about sixteen thousand acres.

Commissioner PROUTY: Have you made any estimate as to the number of thousand feet it contains?

Mr. MILES: Approximately eight hundred million feet, as near as we can estimate it.

Commissioner PROUTY: How much do you cut per year?

Mr. MILES: We cut in 1907 about thirty-four million feet.

Mr. TEAL: That was during this year?

Mr. MILES: Yes; that is in ten months.

Mr. TEAL: About what has the common price of timber been for the last year or two, when it was being bought up for use,
304 sawed up and cut into lumber, in the section you are in?

Mr. MILES: I should say about one dollar a thousand.

Mr. TEAL: Where is the principal market for this rough side lumber?

Mr. MILES: The market is almost altogether in California.

Mr. TEAL: You heard Mr. Booth's testimony as to the effect upon the milling industry, unless the lumber can be marketed in San Francisco. What do you say as to that?

Mr. MILES: It is correct.

Mr. TEAL: What do you say as to whether that applies generally to the Willamette Valley?

Mr. MILES: I think it applies to practically all the mills in the Valley, especially the smaller mills in the Valley. I think it applies to them much more than to the larger ones.

Mr. TEAL: State briefly to the Commission the result of your last investment in the building of a mill, the amount of the investment, the time it took and what occurred at the time it was built.

Commissioner PROUTY: Unless there is something which
305 has a special bearing on this case, we ought not to take up the time with that.

Mr. TEAL: I thought we might show briefly that he started in to build a mill, and when this rate was *rate was* taken out in January, 1904, it was absolutely stopped. I think he would testify that he saw the Southern Pacific people and that the rate was restored—not because he saw them or anything of the kind. They encouraged him to go on with it and the rate was restored. They invested a great deal of money, but that is not important. I do not care to go into it unless the Commission wishes me to do so.

Commissioner PROUTY: That general fact is important; but not the fact that this individual member did that perhaps. He is not standing here asking us to enforce some contract with the Southern Pacific Road, and he is not asking that the Southern Pacific Road be estopped from putting in this rate as to him in particular. The simple question here is what is the fair thing to be done with reference to these mill owners.

Mr. TEAL: If the Commission does not object, and it is important enough, I would like to have him make that particular statement.

306 Commissioner PROUTY: You may briefly state it.

Mr. MILES: We had been logging up to 1903, and we had seen other mill men prosper, so we thought we would go into the lum-

ber business. We took in additional capital and made arrangements to build a mill there in 1903. Before we commenced our construction we found that this rate was uncertain, and we ceased our plans for work, although we had increased our capital. We did not commence the construction of the mill or do anything towards it, until after the rate was fixed in May, 1904, at which time we commenced the construction of the largest mill we have now, and since then we have purchased two other mills. Before that we had done nothing along that line.

Mr. TEAL: Do you know Mr. Coler?

Mr. MILES: I went pensonally to Mr. Coler and talked to him about the building of this mill at that point, and he came personally and looked over the ground and laid out the place where he thought we ought to put the mill. He encouraged us to go ahead and build the mill.

Commissioner PROUTY: Assuming that this water rate from Portland to San Francisco has *d*vanced one dollar a thousand
307 feet, do you think that should prevent this railroad company from advancing your rate?

Mr. MILES: No sir; I do not think so. I based it on the competition we had there.

Commissioner PROUTY: You think they ought to give you a rate which would enable you to do business?

Mr. MILES: Yes sir.

Commissioner PROUTY: And if the conditions changed the rate might properly be changed to meet those conditions?

Mr. MILES: I should look at it in that way; yes sir.

Mr. TEAL: Did you have any orders cancelled from San Francisco, after this rate was changed?

Mr. MILES: We had about 110 carloads cancelled.

Mr. TEAL: How many orders have you received from San Francisco since this rate was changed?

Mr. MILES: None for the class of lumber upon which the rate was changed.

Mr. TEAL: Can you state how many carloads you have shipped to San Francisco since the rate was changed?

Mr. MILES: We have shipped four under that classification, which we had already received orders for, and we have shipped some of other grades.

308 Mr. TEAL: Would you state that that was substantially the effect upon all the mills in the Willamette Valley?

Mr. MILES: Yes sir.

Mr. ABEL: Your total cost for the production of lumber at Dallas, as compared with Portland, is about six and a half dollars a thousand upon all grades; that is the average cost, is it not?

Mr. MILES: No sir; it is more than that.

Mr. ABEL: What is it?

Mr. MILES: At Dallas we are very favorably situated, and we have a cheaper cost there than we have at the other mills.

Mr. ABEL: What is the cost at Dallas?

Mr. MILES: Without any stumpage, usually from eight dollars to eight dollars and an half.

Mr. ABEL: Your stumpage costs you how much?

Mr. MILES: About a dollar a thousand. We have just purchased it at that recently.

Mr. ABEL: You bought a great deal of stumpage at much less than that; did you not?

Mr. MILES: We did buy some.

Mr. ABEL: As low as twenty cents; did you not?

309 Mr. MILES: Not recently. The first purchase that we made perhaps did not cost more than that.

Cross-examination:

Mr. COTTON: Then you can log and make lumber at Dallas for $9.50, all grades?

Mr. MILES: At that particular point we can; yes sir. That is we can make cheap lumber. We have another mill where it costs us approximately $13 a thousand.

Mr. COTTON: How much do you cut at Newberg?

Mr. MILES: We cut about eighteen million feet.

Mr. COTTON: How much do you cut at Dallas?

Mr. MILES: About six million feet.

Mr. COTTON: Your Newberg mill is situated on what is known as the Jefferson Short Line?

Mr. MILES: Yes sir.

Mr. COTTON: I wish you would tell the Commission how your Newberg mill lumber gets out of the State of Washington, going south.

Mr. MILES: Going to California?

Mr. COTTON: Yes sir; and go slow please.

Mr. MILES: It goes over the Southern Pacific around to
310 Corvallis, and from there to Albany, to the main line, and then south over the Southern Pacific.

Mr. COTTON: That is on account of the recent acquisition of the Corvallis eastern. Did it always go that way?

Mr. MILES: I think it has nearly always gone that way.

Mr. COTTON: Did you pay this differential of twenty-five cents?

Mr. MILES: Yes sir; we did.

Mr. COTTON: You say you were logging up to 1903?

Mr. MILES: Yes sir; and we were before that.

Mr. COTTON: Did you own any timber up to that time?

Mr. MILES: Yes sir.

Mr. COTTON: You bought some of this timber up there at a dollar a thousand? How much higher freight rate, if any, can you stand on California shipments than Booth-Kelly?

Mr. MILES: I don't know that we can stand any.

Mr. COTTON: Your cost is really higher than theirs; is it not?

Mr. MILES: Yes sir.

Mr. COTTON: All of these new mills in the Valley, in the last few years, have bought the timber at a higher price than theirs?

311 Mr. MILES: I do not know about that. I suppose so though, on an average.

Mr. COTTON: It is generally known that their timber costs them less than any other mill in the State of Oregon. Is not that right?

Mr. MILES: I don't know, Mr. Cotton.

Mr. COTTON: Have there been many new mills started up in that territory?

Mr. MILES: Yes sir.

Mr. COTTON: In the last two or three years?

Mr. MILES: Yes sir.

Mr. COTTON: Has that been due to the fact that there has been an increased demand for Oregon fir?

Mr. MILES: Yes; I think that taking our immediate neighborhood there have been at least eight or ten mills built for the purpose, primarily, of filling contracts for your people. They take a contract for a certain amount, and then they figure on marketing their side cut at a price that will make them a little margin.

Mr. COTTON: Some of those ties are for eastern shipment?

Mr. MILES: Most of those ties are for your company.

312 Mr. COTTON: And for the Union Pacific?

Mr. MILES: I think not. I think most of them are for the Southern Pacific. I know of two mills that are closed down to-day that have contracts at a fair price, but they couldn't market their side cut, and for that reason they are not running.

Mr. COTTON: Do you know whether those men paid a good price for their timber?

Mr. MILES: I think they paid about fifty cents to a dollar.

Mr. COTTON: And therefore they would labor under a disadvantage if they had to pay a higher freight rate than Booth-Kelly to the South?

Mr. MILES: Yes.

Mr. COTTON: Do you think you gentlemen in the neighborhood of Newberg and Salem could pay a higher rate on stuff to the East, than the Portland mills?

Mr. MILES: No; we cannot.

Mr. COTTON: Then in this middle territory of Newberg, Salem and Dallas, in which you operate, it is necessary, in order that you may continue in business and that others similarly situated may

313 continue in business, that the blanket rates should practically continue as they exist now, both east and west?

Mr. MILES: I should say not as they exist now, but as they did exist when we built our mill.

Mr. COTTON: I am referring to blanket rates.

Mr. MILES: Yes; I think they are preferable.

Mr. COTTON: You cannot get along very well without the eastern market or the California market?

Mr. MILES: Not very well, no sir. It is hard to market all our product in any one place.

Mr. COTTON: You could not market your product in any place if you paid a higher rate than Booth-Kelly to the south and a higher rate than Portland to the east, without a considerable loss to yourself; could you?

Mr. MILES: No; I don't hardly think so.

Mr. COTTON: And you think that is fairly typical of most of the mills in the Willamette Valley?

Mr. MILES: I think the man who has to pay the higher rate is certainly at a disadvantage.

Mr. COTTON: I mean on account of the price they pay for their timber and on account of the situation.

314 Mr. MILES: There may be certain cases where a man could operate, if he has a particularly cheap place.

Mr. COTTON: Of the 150 mills operating in the Willamette Valley, south of Portland, their situation is such that they are small producers?

Mr. MILES: Yes; quite generally.

Mr. COTTON: Their machinery is certainly not any better than that of the large mills?

Mr. MILES: No; but I think the majority of them operate for less per thousand feet than the larger mills; just as we operate at Dallas for a lower price than we do at Newberg.

Mr. COTTON: Then you think these larger mills pay more money for manufacture?

Mr. MILES: I think, as a rule, the average cost is more in the larger mills than in the smaller mills.

Mr. COTTON: But they do not make as much high-grade stuff; do they?

Mr. MILES: No.

Mr. COTTON: The profit in logging and in lumber in the Willamette Valley is largely in high-grade stuff, is it not?

Mr. MILES: Yes sir.

315 Mr. COTTON: And the main difficulty for everybody is to get rid of the common lumber?

Mr. MILES: Yes sir; that has usually been the difficulty.

Mr. COTTON: There is no real difficulty about getting rid of your high-grade stuff, even on the present rate?

Mr. MILES: There has been. We have quite an accumulation of fairly good stuff.

Mr. COTTON: I mean of course if it had not been for this slump, financial and otherwise, which has taken place.

Mr. MILES: It is easier to dispose of that than it is of the common.

Mr. COTTON: That is all I have to ask.

Mr. TEAL: In view of the fact that it has been agreed that the other testimony may be applicable to this case, I will not introduce any more witnesses. I desire, however, to introduce some record testimony.

I wish to have copied in the record the directions to agents of the Southern Pacific Railroad Company, dated July 31, 1903, issued by

316 Mr. W. E. Coman, General Freight Agent of the Southern Pacific Company, and I call particular attention to the fact that, in that statement, he fixes the water rate at that time and says:

"And as the rate by water from Portland is to-day five dollars per thousand feet, on all classes of lumber, the advance to five dollars

per ton on kiln dried machined lumber, still maintains the rate on the water basis."

Mr. COTTON: It all goes in; does it not?

Mr. TEAL: Yes.

Commissioner PROUTY: Do you understand that this also shows that the rate per ton by rail should be the same as the rate per ton by water? Do you understand that the railroad company has at any time admitted or claimed that the rate per ton should be the same as the water rate per ton?

Mr. TEAL: No; they simply maintained the parity. They would be out of business if they did that. He says here:

"This class of lumber averages about one ton weight per thousand feet, and as the rate by water from Portland is to-day five dollars per thousand feet, on all classes of lumber, the advance to five dollars per ton on kiln dried machined lumber, still maintains the
317 rate on the water basis."

Commissioner PROUTY: Was not the rate advanced five dollars per ton at that time, on all lumber?

Mr. TEAL: Yes——

Commissioner PROUTY: That may be copied into the record.

(The above mentioned directions to agents of the Southern Pacific Company, are in the words and figures following, to wit:)

PORTLAND, *July 31st*, 1903.

To Agents:

Effective August 20th, the present rates of $3.10 and $3.50 per ton on lumber, etc., carloads, from Portland and Oregon points, Glendale and North, to San Francisco, Oakland, Sacramento, Stockton and other California points, as specified in tariffs, will be advanced to $5 per ton from Portland, on lumber, lath and fence posts, straight or mixed carloads while from points specified south of Portland, the present rates will remain — effect, with the exception that on kiln dried "machined" lumber the rate will be advanced to $5 per
318 ton, same as from Portland. This class of lumber averages about one ton weight per thousand feet, and as the rate by water from Portland is to-day $5.00 per thousand feet on all classes of lumber, the advance to $5.00 per ton on kiln dried "machined" lumber, still maintains the rate on the water basis.

"The rates to interior California points, not specified above, will not be advanced, except that $5.00 per ton will be the minimum in all classes from Portland, and all kiln dried "machined" lumber, from points south of Portland. Exception—Rates from Portland to points on the Central Pacific, East of Roseville Junc., will be advanced to sum of locals on Roseville Junc., the Corinne, Utah, rate of $5.00 per ton to be observed as the maximum. The rates to those points from stations indicated South of Portland, will not be advanced.

"Rates from Portland will also be advanced as follows: Piling and Poles, straight carloads; Box Shooks, straight carloads or mixed with shingles, lumber, lath or fence posts, $6.00 per ton. No advance will be made in these rates from points South of Portland.

319 "Copies of the tariff will be sent you within a few days, but this advance notice is furnished in order that you may promptly advise all of your shippers, so there will be no misunderstanding, as no exception will be made after August 20th, when the change will become effective.

Please acknowledge receipt and say if understood.

Yours truly, W. E. COMAN, *G. F. A.*"

W. E. C.—S.

Mr. TEAL: I would also like to have copied into the record Circular F-70, issued May 4th, 1904, by W. E. Coman, General Freight Agent of the Southern Pacific Road, and also Joint Circular No. GFD—F-73, dated May 10th, 1904.

Commissioner PROUTY: They may be inserted into the record.

(The above mentioned circulars are in the words and figures following, to wit):

"PORTLAND, OREGON, *May 4th*, 1904.

320 Circular No. F-70.

To agents:

File 136-E. Referring to Circular No. F-68 of April 21st, advance notice of changes in lumber rates to California points, effective May 10th. The tariff will be mailed to you shortly, but to enable you to explain fully to your shippers, and others interested in the re-adjustment, at the earliest possible moment, all changes are shown below:

Green Common Rough Fir Lath and Lumber Only.

(Straight or Mixed Carloads.)

To

San Francisco, San Francisco (Vallejo St.) Alameda, Oakland (Market Street), Oakland, (Adams Wharf), Oakland Wharf, Oakland (16th St.), Stock Yards, West Berkeley, San Pablo, Hercules, Vallejo Junction, South Vallejo, Port Costa, Benicia, Martinez, Peyton, Bay Point, Cornwall, Antioch, only.

From

Albany, Glendale, and points between, including points on Woodburn-Springfield Branch, Tallman and South, also Lebanon Branch..... $3.10 per ton.

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Airlie, Tualatin, and points between, including Sheridan Branch, on Yamhill Division; also Corvallis, Beaverton, and points between on West Side Division ..... $3.35 per ton.

"This restores on green common rough fir lath and lumber only, straight or mixed carloads, the rates of $3.10 and $3.35 per ton which were in effect from points South of Portland prior to January 1st, 1904.

"The above rates cannot be used as basing rates, but through rates will be published to the points in California where the local rate from San Francisco, added to the above rates, makes lower than $5.00 per ton, and rates to such points will be published in each case as shown below.

"From Portland, East Portland, Glendale and points between on East Side Main line, including points on Woodburn-Springfield Branch, Tallman and South, and Lebanon Branch, to points named below:

(Rates shown below will not apply as intermediate, but only to and from points specified.)

Green Common rough Fir Lath and Lumber only, Straight or Mixed Carloads.

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East Oakland	$3.60	San Leandro	$3.70
Sather	3.60	Lorenzo	3.70
Heywood	3.70	Alvarado (BG)	3.70
Locoto	4.10	Lothrop	4.30
Stockton	4.30	Lodi	4.50
Mockeford	4.90	Clement	4.90
Wallace	4.90	Valley Springs	4.90
Acempo	4.50	Galt	4.70
Suisun	4.40	Cordella	4.60
Napa Junction	4.30	Shellville Jct.	4.50
El Vorano	4.90	Kenwood	4.90
Santa Rose	4.90	Niles	4.10
Irvington	4.10	Warm Springs	4.10
Milpitas	4.10	San José	3.70
Sunol	4.30	Pleasanton	4.50
Napa	4.30	Yountville	4.80
Elmira	4.40	Vacaville	4.40
Peters	4.30	Milton	4.90
Farmington	4.30	Oakdale	4.90
Waterford	4.90	Ripon	4.75
Modesto	4.90	Ocean View	3.55
Colma	3.55	So. San Fran.	3.55
Milbrae	3.55	Burlingame	3.55

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Livermore	4.70	Concord	4.50
Walnut Creek	4.90	Brentwood	4.30
Byron	4.30	Bethany	4.30
Tracy	4.30	San Mateo	3.55
Belmont	3.55	San Carlos	3.55
Redwood	3.55	Menlo Park	3.55
Palo Alto	3.55	Mayfield	3.55
Mt. View	3.70	Lawrence	3.70
Santa Clara	3.70	Coyote	4.45
Morganhill	4.45	Hollister	4.90
Santa Cruz	4.90	Monterey	4.90
Campbell	4.30	Los Gatos	4.30

"From Portland (Jefferson Street) and all points on West Side and Yamhill Divisions, including Sheridan Branch, to the above named points only, add to rates shown 25 cents per ton when same does not exceed $5.00 per ton.

"With the exception of the changes in the rates on green common rough fir lath and lumber only, straight or mixed carloads, as noted above, the present rates as named in Amendments 84 and 91 to Lumber Specials No. 1, applying from points in Oregon,
324 will continue in effect.

W. E. COMAN,
General Freight Agent."

(Cir. No. 70, p. 2.)"

"PORTLAND, OREGON, *May* 10, 1904.

Joint Circular No. GFD—F-73.

To agents and conductors:

File No. 136-E. Referring to Circular No. F-71 of May 4th, 1904, issued by General Freight Office, instructions as to way-billing and designating green common rough fir lumber and other lumber.

"Agents and Conductors will, when receiving orders from shippers for cars to load with lumber, for points to which lower rates apply on green common rough fir, request shippers to specify whether shipment consists of such lumber, or lumber N. O. S., and if former is designated, have it understood with shipper that flat car will be furnished, if available. This low class lumber can be shipped in flat car equipment, in all cases to advantage, and should shipper
325 object to such equipment, special effort must be made to check such shipment, for assurance that nothing but the class of lumber entitled to the lower rate is loaded.

"When actual check of the contents of all cars billed as green common rough fir cannot be obtained, way-bills must bear notation "Shipment not inspected; Agent at destination will check, and assess proper charges.

W. E. COMAN,
General Freight Agent.

L. R. FIELDS,
Superintendent."

Mr. TEAL: In connection with such evidence as I may desire to refer to in my brief, as to the business done by these companies, I would like to have considered as offered in evidence the copies of the official reports filed in the Interstate Commerce Commission.

Mr. COTTON: By what company?

Mr. TEAL: By the Oregon & California Railroad Company, if it has been filed, and if not that of the Southern Pacific.

Mr. COTTON: The Oregon & California filed their report.

326 Commissioner PROUTY: What is the Oregon & California Company?

Mr. COTTON: It is a leased road.

Commissioner PROUTY: And extends from where to where?

Mr. COTTON: It extends from Portland to the top of the mountain, that is to the California & Oregon State line.

Commissioner PROUTY: The Southern Pacific operates the Road?

Mr. COTTON: Yes; it is a leased line.

Mr. TEAL: The Southern Pacific owns practically all of the stock; does it not?

Mr. COTTON: I do not know anything about that.

Mr. TEAL: I think it is so admitted in the answer.

I also desire to have considered in evidence, as we did in the other case, the annual report to the stockholders of the Southern Pacific, for the period commencing in 1897 and ending June 30, 1907, the date we filed a request with the defendant and asked for certain information to be furnished for this hearing. I would like to ask if any of that information has been prepared and is to be furnished. I will read what it is:

327 "A statement showing annual gross and net earnings of each defendant from the movement of all lumber, shingles and other forest products for the fiscal years 1900 to and including the year ending June 30, 1907, and to the final hearing of this cause."

Commissioner PROUTY: Do you mean the revenues from the movement of lumber and shingles, and forest products, on all points on the Southern Pacific?

Mr. TEAL: No sir.

Mr. COTTON: Yes sir; it relates to all parts of the road. I told Mr. Teal's clerk, when this copy was served on me, that I did not intend to furnish that unless requested so to do by the Commission.

Commissioner PROUTY: We ought to have, if it can be furnished, a statement showing the earnings from the movement of lumber on this railroad in question, from Portland to San Francisco.

Mr. COTTON: I asked him whether he was willing to restrict it, and he said no; that that was what Mr. Teal had instructed him to serve. I then told him he could notify Mr. Teal that it would not be produced.

328 Mr. TEAL: Then I would like to ask for the gross earnings for this road for lumber and forest products through Ashland, from the year 1898 to 1907.

Mr. DILLARD: I have received a letter from Mr. Herrin, accompanied by the affidavit of Mr. Hasborough which I thought I had with me. I find that in changing my papers in the case I left it at the hotel. Mr. Teal's request was referred to him and he went to work to see what he could get out of it. There was a great deal of it that could not be furnished He started to work in good faith to get what he could of it, but he found that it was utterly impossible because he had not received the notice until the 4th day of December, and in addition to that to comply with the request in full would take quite a number of experts and cost something like four or five thousand dollars. They would have to get the way bills of each and all the conductors——

Mr. COTTON: It covers the entire Southern Pacific system.

Commissioner PROUTY: We do not want that; but it seems to me that this Commission ought to know, before it passes on this question, substantially what your earnings are on this railroad.

Mr. COTTON: There is no objection to that at all.

329 Commissioner PROUTY: What your train mileage cost is, for example, on this railroad and what your earnings for a specified period under the $3.10 rate were from lumber on this railroad, and other general facts of that sort, so as to give us some general idea as to what it costs to operate trains on this line between Portland and San Francisco.

Mr. DILLARD: I want to say with regard to that, that this was a part of the information I desired to bring before the Commission myself; but the time allowed between the filing of the bill and the hearing of the case was so short that I could not get a part of it, even for my own use here. As far as we can, we will be glad to comply with your request.

Commissioner PROUTY: Let us see what information Mr. Teal is asking for and then perhaps we can agree upon what should be furnished.

Mr. TEAL: The next one is: "A statement by each of said lines showing the number of cars applied for during the years 1906 and 1907 to each of the said defendants for cars for the shipment of lumber, shingles, and forest products for interstate shipment from the States of Oregon and Washington, and the number of cars

330 furnished on said applications."

Commissioner PROUTY: Mr. Teal, the number of cars applied for does not necessarily enter very much into this matter. We ought to know the number of cars handled, and the direction in which those cars have been handled.

Mr. TEAL: We also asked for a tabulated statement showing car movement of lumber and lumber products through Ashland, Oregon, by years from and including the year 1898 to and including the year 1906, and by months from January, 1903, to December 1, 1907.

Commissioner PROUTY: There is an embarrassment about providing that information on account of the fact that the records of the Southern Pacific Company have been destroyed. I do not know whether those particular records have been destroyed or not.

Mr. COTTON: We will do the best we can to furnish that to you. If we can find it, we will give it to you.

Mr. TEAL: I know that a part of the records have been destroyed; but I have a distinct recollection that these gentlemen have furnished information about the number of cars going to Ashland, in another case.

Mr. DILLARD: I think possibly we can get that from the Oregon office.

331 I had forgotten that there was a statement introduced in the other case.

Mr. TEAL: Yes sir; about seven thousand and odd carloads. Mr. Miller testified to it in that other case.

Mr. COTTON: I would like to have all of these articles read and I

think then the Commission will understand why I told Mr. Teal I did not intend to comply with them.

Commissioner PROUTY: You deed not take up the time to read all of the paper.

Mr. TEAL: I next called for a tabulated statement showing the total tonnage of freight carried by the defendants' lines in Oregon, both inter and intrastate, for the years commencing with and including the years 1898 down to and including the year 1907, to December 1st.

That is for the purpose of showing the increase of business on this road in the freight movement. Of course, if the records are burned we cannot show it.

Mr. COTTON: I do not think that can be shown. I do not know whether the Southern Pacific makes a separate operating re-
332 port on the Oregon & California line or not. I think it is possible that it is all bunched in together.

Mr. TEAL: The next is "Tabulated statements showing the number of cars delivered by you to the Salem, Falls City & Western Railway Company at Dallas, Oregon, and the number of loaded cars received by you from said road at said point, and the number thereof so received which were loaded with lumber since the Salem, Falls City & Western Railway has been in operation, said table to show delivery and receipt of cars by years.

Commissioner PROUTY: What railroad is that?

Mr. TEAL: That is one of the branch lines that was referred to. It has not been in operation very long. I would like to show the volume of traffic originating on that road.

Commissioner PROUTY: I expect you could show the number of cars received over that road during some certain period, and it would be proper for you to do so.

Mr. COTTON: Yes; we can.

Commissioner PROUTY: It is hardly worth while to cover the whole period asked for by Mr. Teal.

Mr. COTTON: There are two little roads which were built in to the timber country, just like this Wendley line.

333 Mr. TEAL: I would like to have the Commission see what traffic these little lines of which you speak furnish to the big roads.

Mr. COTTON: There is no objection to that.

Mr. TEAL: The next is "Tabulated statement showing cars delivered at Mohawk Junction for use on what is known as the Mohawk Branch between Mohawk Junction and Wendling by years since the month of September, 1899, to December 1, 1907, and also the cars received at Mohawk Junction from said branch, and the number thereof loaded with lumber."

That of course can be limited to 1905; but I would like to show what comes off from that branch in the shape of traffic to the main line.

Mr. COTTON: I guess we can furnish that in the course of time.

Mr. TEAL: I did ask for the number of local passengers; but I will omit that. I also asked to have made a table showing the

car movement of lumber and lumber products from Salem to California that is included in this $3.10 territory and also points based on the $3.10 rate, directly tributary thereto within a radius
334 of $1.90 per ton carload lumber rate from San Francisco by years from and including the year 1898 to an- including the year 1906, and by months from January 1, 1905, to December 1, 1907.

Mr. COTTON: That is from Salem and points adjacent to Salem?

Mr. TEAL: No; I mean from Salem to the South.

Mr. COTTON: That means that we have got to go from 1898 and examine every little way bill from the north of Salem.

Mr. TEAL: I will state to the Commission that the only way in which it will be possible to show the traffic that moved in this $3.10 territory would be by an answer to this question. If they decline to show it, it is perfectly satisfactory to me.

Mr. COTTON: We can show everything that passes Ashland.

Commissioner PROUTY: Why does not that answer your question? Suppose they show everything that passes Ashland going south, and in addition to that show the loaded cars of lumber which they carry out of Portland. I presume some lumber has gone from Portland; even since the higher rate. If they would show that for some
335 special year when traffic conditions were in a normal state, as, for instance, in 1905, would not that answer your question?

Mr TEAL: No and yes—not unless you separate your $3.10 basis from the $5.00 rate.

Commissioner PROUTY: The Commission will make some arrangement about that.

Mr. TEAL: In the table showing the movement through Ashland, I would like to have separated and segregated the cars that they load with lumber, as distinguished from the cars loaded with commercial freight.

Commissioner PROUTY: How do you keep your accounts; do you keep them so as to show that?

Mr. COTTON: I am sure I do not know. My connection with the Southern Pacific is very nominal, and I have nothing to do with their ordinary business or litigation.

Mr. DILLARD: I cannot answer as to those two lines.

Commissioner PROUTY: Is this all you have asked for?

Mr. TEAL: No; that is not all I have asked for, but that is all I am going to ask for now.

Commissioner PROUTY: If you will let us take that paper,
336 we will consider it and make some order in regard to it.

Mr. TEAL: I would like to have a statement filed in this case showing the division allowed on the earnings, the interstate earnings, to the Oregon & California Railroad Company on all business passing Ashland.

Commissioner PROUTY: I have understood that the Southern Pacific operated this line from Portland down to San Francisco, and must not the whole line be treated as a unit in determining this question?

Mr. COTTON: No.

Mr. DILLARD: I think they keep those divisions separately.

Commissioner PROUTY: I asked whether in this case we must not consider the line as a unit.

Mr. TEAL: Yes sir.

Commissioner PROUTY: What do you say to that, Mr. Cotton? Do you make any claim that the Oregon & California Railroad earns a certain amount of money and we only ought to consider what that road earns?

Mr. COTTON: I do not know about that; but it does seem to me that when the Southern Pacific operates only seven hundred miles north of California that we ought to make a rate for that seven
337 hundred miles, when it is a separate and distinct branch, and has nothing in common with other lines.

Commissioner PROUTY: I am not saying there is any connection between the earnings of the Southern Pacific as a whole and the earnings of that piece of road; but I say that this piece of road from Portland down to San Francisco should be treated as a unit.

Mr. COTTON: I infer that they do keep separate accounts for the Oregon & California, from the fact that we have a lease agreement, and I infer that the Interstate Commerce Commission have reports from the road——

Mr. TEAL: Those reports show it separately and do not show a division of the expenses. We do not care, at this time, to enter into a discussion as to how freight should be treated that originates on that line, and affects all the system, or *vice versa;* but I should like to have at this time information as to the division allowed the Oregon & California, and information as to how the expenses are divided.

Mr. COTTON: I do not know how the expenses are divided. I can tell you what the division is.

338 Mr. TEAL: When the time comes to present this case, I can show the Commission how necessary these things are.

Mr. COTTON: We do not carry those things in our heads. This is new matter altogether. I can tell you the divisions now; but I cannot tell you how the orders are derived.

Mr. TEAL: I will ask for a statement showing the divisions of all interstate trade that reaches the Oregon & California, and what proportion is allowed to them.

Mr. COTTON: Do you want it right now?

Mr. TEAL: No sir. I also want a statement showing the proportion of operating expenses charged, other than those that are the direct result of operations locally.

Mr. DILLARD: We will show you, as nearly as we can, the total expense of operating from Portland to California.

Commissioner PROUTY: Does the Oregon & California Railroad have a separate operating account?

Mr. DILLARD: Yes sir; they have, but I do not know how it is made up.

Mr. TEAL: I shall also file with the Commission a report of the

Board of Commissioners of the State of Oregon on assessment
339 and taxation, and I will give the pages to which I want to refer. I will refer to the reports filed in connection with the operation of the Oregon & California Railroad Company.

I would like to have it admitted, as I imagine it will be, that the Corvallis & Eastern is now owned and controlled by the Southern Pacific Company.

Mr. COTTON: I do not think we are prepared to admit that.

Mr. TEAL: It has been stated a half dozen times in this case. There has not been a witness examined, when you have not made that statement.

Mr. COTTON: It may not be by the Southern Pacific.

Mr. TEAL: Then I will ask that it be admitted that it is operated by somebody in harmony with the Southern Pacific.

Mr. COTTON: I will state that it is operated by Mr. O'Brien, Vice President of the Oregon & California line.

Mr. TEAL: I think that is our case. I will hand these documents up to you.

Commissioner PROUTY: We will make some order about
340 that tomorrow morning.

The Commission thereupon adjourned until to-morrow, Saturday, December 21, 1907, at 10 o'clock a. m.

341 WASHINGTON, D. C., *December* 21, 1907.

The Commission met at 10 o'clock a. m.

Present: Commissioners Prouty and Cockrell.

Present also, counsel for the respective parties.

Commissioner PROUTY: Mr. Cotton, in considering what information you ought to furnish, it seems that one important item to the Commission will be the number of car loads of lumber passing south through Ashland and north through Ashland. During what period of that time can you furnish that information?

Mr. COTTON: Mr. Miller, during what period of time do you think you can furnish the number of car loads of lumber passing south through Ashland?

Mr. MILLER: I have some figures here.

Commissioner PROUTY: How long a period would they cover?

Mr. MILLER: Since 1901.

Commissioner PROUTY: You can furnish, then, the num-
342 ber of car loads passing through Ashland for the years 1905, 1906, and 1907?

Mr. MILLER: Yes, sir.

Mr. COTTON: I think we might as well start back as far as we can.

Commissioner PROUTY: Yes; start back as far as you can.

Mr. COTTON: And north bound, where we connect with the O. R. & N., of course we have full records. Our records are intact.

Commissioner PROUTY: Is Ashland an operating divisional point?

Mr. COTTON: Yes, sir.

Commissioner PROUTY: You could, of course, show the same in-

formation with respect to the lumber movement through Portland that you can through Ashland?

Mr. COTTON: Yes, sir; going out.

Commissioner PROUTY: Going out towards the east?

Mr. COTTON: Yes, sir.

Commissioner PROUTY: Can you show, Mr. Cotton, the movement of all your cars through Ashland—the total number of cars?

Mr. COTTON: Yes, sir.

343 Commissioner PROUTY: We will ask the defendants to file statements, then, showing, first, the number of car loads of lumber passing south through Ashland for the years 1905, 1906 and 1907. Of course you can go as much farther back as you choose.

Mr. TEAL: If you will pardon me, if it can be done I would like to have it from 1899. That was our request.

Mr. COTTON: We will go back as far as we can.

Mr. TEAL: I would like to have it start with the rate.

Commissioner PROUTY: Second, the total loaded and empty car movement through Ashland in both directions for the years 1905, 1906, and 1907. I do not think it is necessary to go back of that time, unless you want to. If possible, classify this last statement as you did, Mr. Cotton, in your O. R. & N. statement.

Mr. COTTON: Yes, sir.

Commissioner PROUTY: Can you show the average loading of lumber on your road, Mr. Miller?

Mr. MILLER: No, sir.

Commissioner PROUTY: Can you show it on the Oregon & California road?

344 Mr. MILLER: No, sir.

Commissioner PROUTY: You could show it for a certain limited time. You could figure it out from your way bills.

Mr. MILLER: It would have to be prepared; yes, sir. We have not the data in shape.

Commissioner PROUTY: We will ask you to show the average car load of lumber for what would be some representative month during this present year.

Mr. TEAL: And during the spring, or when they were moving.

Commissioner PROUTY: Say during the month of May, 1907.

Mr. TEAL: I do not believe they were moving then. I think it would be well to take the month of May 1906 and say February 1907.

Commissioner PROUTY: Whenever this lumber moves, it moves in car load lots, and the car load loadings would be about the same. We are not asking for the number of cars moved, but we are asking for the average car loading.

Mr. TEAL: Any month they say would be satisfactory to me.

345 Commissioner PROUTY: What do you say would be a representative month, Mr. Miller, for the year 1907?

Mr. COTTON: February would be a good month, would it not, Mr. Teal?

Mr. TEAL: Any month you say that would give an average loading.

Commissioner PROUTY: Show the average car load loading for the month of February 1907 on the Oregon & California road. Commissioner Cockrell would like to have you supply that same information for the same month in 1906, if you can.

Mr. COTTON: Yes, sir.

Commissioner PROUTY: Now, show these same facts with reference to the movement through Portland of lumber, and the loaded and empty car movement, that you show through Ashland.

Mr. COTTON: That is, from the Southern Pacific?

Commissioner PROUTY: From the Southern Pacific, through Portland. We would also like to have you show the size of your trains in and out of Ashland. Take the first week in February,
346 1907, the first week in June and perhaps the first week in November, and show the number of trains which you hauled out of Ashland towards the south, the number of cars in each train, the number of loaded cars and the number of empty cars. Show the number of trains into Ashland for the same period, the number of loaded and the number of empty cars, and give the same information with respect to your trains out of and into Ashland towards the north and from the north.

Mr. TEAL: Could that same statement cover any period you desire to name in 1905?

Commissioner PROUTY: It occurred to me, Mr. Teal, that it might be a difficult matter for them to go back. Do you know, Mr. Miller whether you could go back and furnish that information?

Mr. MILLER: It may be practicable, but I very much doubt it.

Mr. TEAL: They have records in the office at Ashland.

Commissioner PROUTY: You would have records for this year, undoubtedly?

Mr. COTTON: Yes, and we might have records at Ashland, if they were not destroyed, that would show it.

347 Commissioner PROUTY: If you can show the same information for 1905, you may show it. I do not attach very great importance to that. Now, can you compare the entire lumber tonnage upon the Oregon & California Railroad with all your other tonnage?

Mr. MILLER: Yes; I think so.

Commissioner PROUTY: You may do that for such a period as you can. Can you show the entire lumber earnings on that road as compared with your entire freight earnings for any period?

Mr. COTTON: We could with lumber and forest products, I think.

Commissioner PROUTY: Lumber and forest products on the Northern Pacific would not mean anything.

Mr. COTTON: I do not think we transport any logs to speak of at any place on that road.

Commissioner PROUTY: Then if you can show the earnings from the transportation of lumber and forest products——

Mr. COTTON: I really think the earnings from lumber and forest products would practically answer, and it would save a little trouble in getting it up.

348 Mr. MILLER: Yes; we could furnish that.

Commissioner PROUTY: Do you keep, Mr. Cotton, and Mr. Miller, the same statistics for the Oregon & California Railroad which we require for operating railroads?

Mr. COTTON: I think they do, sir. When I state that, I state the fact that it appears in the Southern Pacific annual report that they apparently treat the Oregon & California as a separate railroad, and it apparently keeps separate books of accounts; and the account which is published there of earnings and operating expenses follows the standard form which the Commission has adopted. I infer that they do.

Commissioner PROUTY: Do they, Mr. Teal? Does the Oregon & California make a report to this Commission?

Mr. TEAL: Not an operating report.

Mr. COTTON: Not an operating report, but the Southern Pacific apparently keeps the earnings.

Commissioner PROUTY: Then we would like to have you file, if you keep those facts, a statement showing your total earnings, your passenger earnings, your freight earnings, the percentage of
349 operating expenses, the earnings per train mile, from freight not passengers—and the operating cost per train mile.

Mr. COTTON: All right, sir.

Commissioner PROUTY: What fuel do you use on that road, Mr. Cotton?

Mr. COTTON: Oil, to a major portion of the road, I think, and wood to some extent.

Commissioner PROUTY: We would like to have you file a statement, reduced to a coal basis, showing the cost of fuel per ton on that line.

Mr. DILLARD: What period do you want that to cover?

Commissioner PROUTY: I think you may show that for the present year if you care to.

Mr. DILLARD: Enough, at any rate, to be illustrative to the Commission?

Commissioner PROUTY: Yes. The last time I was over that road, and it was not a very long time ago either, I think the passenger train was hauled by a couple of locomotives which burned wood.

Mr. COTTON: There is some wood. As I say, the major portion is coal oil, but there is wood, I think, in spots.

350 Commissioner PROUTY: As it appears to me, it would be a difficult matter for you to compare your present price of fuel with the price when this rate was put in, but you can show what is the cost on the basis of a ton of coal. Now, Mr. Teal, you asked for a statement of the quantities of lumber purchased by the Southern Pacific in the Willamette Valley. Do you care for that?

Mr. TEAL: They are going to furnish that in the other case.

Commissioner PROUTY: They are going to furnish it in the other case with respect to these other roads.

Mr. COTTON: And the Southern Pacific, too.

Commissioner PROUTY: If you are going to furnish that, please distinguish between the Portland mills and the mills in the Will-

amette Valley. What we would like to get is the amount of lumber purchased by the Southern Pacific road from these mills in the Willamette Valley, not including Portland.

Mr. COTTON: I want to make an explanation both to the Commission and to Mr. Teal in regard to this lumber statement. I
351 find by inquiry that we have a system that is going to make it a little difficult to point out just exactly the information which I agreed to furnish Mr. Teal. Mr. Kohler, the purchasing agent of the O. R. & N., buys ties for everybody connected with the Harriman system. Those ties are taken in first into the O. R. & N. accounts. That is, they are carried practically in suspense. Then the ties are sold to the Short Line, the Union Pacific and the Southern Pacific Lines in Oregon, I think. I am not quite positive about that. That is simply done as a matter of convenience, because it keeps a big stock of ties on hand, and they file requisitions when they need ties. Other timbers are bought by the respective purchasing agents of the three companies, so it is going to be very difficult. I am going to show the total number of ties purchased by the O. R. & N. and show the prices and from whom, in compliance with Mr. Teal's request, and then I will show the number of ties which were delivered by the O. R. & N. to these companies; but I can not answer Mr. Teal's question as to whose ties any one of the Companies has got. You see what I mean?

Commissioner PROUTY: Yes.

Mr. COTTON: But as to other timbers I can.

352 Mr. TEAL: In connection with that, Mr. Commissioner, there is one piece of information I would like to have. However, I will wait until you finish.

Commissioner PROUTY: Mr. Teal, you asked for the annual reports to the stockholders.

Mr. TEAL: That is already furnished in the other case.

Commissioner PROUTY: You also asked for the delivery of loaded and empty cars to connections at Dallas, Mohawk and Cottage Grove.

Mr. TEAL: By these branch lines that were spoken of.

Commissioner PROUTY: It would not seem that this information is of very great importance, and if it would be much work to furnish it, Mr. Cotton, we do not know that we would require it, but if it is not, you might furnish it. For how many years do you want it, Mr Teal?

Mr. TEAL: Three years would be enough, 1905, 1906 and 1907. Some of them have been operating that long.

Mr. COTTON: I think we can furnish it.

353 Commissioner PROUTY: Then you may furnish the information showing the deliveries of loaded and empty cars to the Southern Pacific by these connections at Dallas, Mohawk and Cottage Grove.

Mr. COTTON: I know we can at Dallas and Cottage Grove, because they naturally have a car interchange. Whether we can at Mohawk, I do not know; but the Booth-Kelly people can tell about it themselves, almost.

Commissioner PROUTY: Was there anything, Mr. Teal, to which you attach special importance in your request?

Mr. TEAL: There was this, Mr. Commission-: I would like to have the number of cars shipped from any of the company mills sawing material. I would like to keep their freight separate from the commercial movement here.

Commissioner PROUTY: How much of that company business is there on that line?

Mr. TEAL: I think there are three mills running.

Mr. DILLARD: Mr. Teal, why will that be necessary? We show the commercial freight generally separate from——

Mr. COTTON: We want to show the commercial lumber.

354 Mr. TEAL: That is what I wanted. It is rather important in regard to the question of a basis for a rate. It is a question how much it is costing them for their own lumber, and it should be very easily furnished.

Commissioner PROUTY: You do not know, Mr. Cotton, whether you keep company freight separate from other freight or not? That is to say, when you ascertain the gross lumber tonnage on your railroad, that would embrace company freight, would it not?

Mr. COTTON: How is that, Mr. Miller?

Mr. MILLER: No, sir.

Mr. TEAL: Their accounts are kept separately. They keep separately the company freight and the freight that pays. That is, all their accounts do, and at any rate they have the record of car shipments from these mills that they own.

Mr. DILLARD: The suggestion I was making was that it would be needless, because if we show the commercial freight separate from the company freight, the freight we ship from our own mills as company freight would be embraced in that, and that would be simply a part included in the other.

355 Commissioner PROUTY: If you can show your company tonnage separate from the other tonnage, of course that answers the question.

Mr. TEAL: It does not necessarily answer the question as to lumber.

Mr. DILLARD: I was speaking about lumber.

Mr. TEAL: I think that is very important in this case; more so than in most cases.

Mr. COTTON: I think we can show the shipments from these mills. They have only been running—how long, Mr. Dixon?

Mr. DIXON: Some of them over a year, I think.

Mr. COTTON: It is just about a year. We can show the shipments from these company mills.

Commissioner PROUTY: Do you keep your accounts in such a way that you can show your company lumber tonnage which is not handled under the tariff?

Mr. MILLER: I think so.

Commissioner PROUTY: If you can show that, that would be more satisfactory.

Mr. COTTON: That would not show the saw mills, because
356 we buy a stack of stuff from these gentlemen. If he wants the saw mills, we can furnish them.

Mr. TEAL: What I want is to know how much came from the saw mills and how much company stuff was purchased and moved by themselves. That ought to be easily furnished.

Mr. COTTON: I think we can separate them.

Mr. TEAL: Mr. Miller, do you charge company freight on that fine?

Mr. MILLER: No, sir.

Mr. TEAL: Then I want it to appear on the record that they do not charge for that.

Commissioner PROUTY: You want a statement of the divisions between the Oregon, California and other lines?

Mr. TEAL: Yes, sir.

Commissioner PROUTY: That is all that occurred to us.

Mr. TEAL: There is one other matter. I do not know whether Mr. Cotton is sufficiently familiar with it or not. If they do make this report the same as other companies do belonging to this system, then we will have an absolutely complete statement of the
357 Oregon and California business segregated. I have asked for the annual report of the Vice President, General Manager or other officer in charge of the defendant, the Oregon & California Railroad Company, to any other official of that company, or of the Southern Pacific Company, to whom he makes annual reports of the business and operations of said company. To explain what I mean——

Mr. COTTON: We do not keep the Oregon & California separately.

Mr. TEAL: Then it can not be done. The O. R. & N. shows absolutely separately everything connected with their business.

Mr. COTTON: The Oregon & California is operated as a part of the Southern Pacific.

Mr. TEAL: I think that will cover it.

Mr. COTTON: We will give you all the statistics, Mr. Commissioner, north of San Francisco that you have covered, or all that we think will be illustrative of the situation.

358 December 21, 10:30 a. m.

Mr. COTTON: Mr. Dixon, or Mr. Booth, with reference to these shipments that Mr. Booth talked about being made south, does that include both company and commercial stuff?

Mr. DIXON: That is commercial material only.

Mr. COTTON: Can you furnish it by year, the number of cars that went out of your mill for the company?

Mr. DIXON: You have it approximately in feet in that exhibit I filed, showing the distribution of our lumber. The right hand column there was practically all Southern Pacific lumber that went south.

Mr. COTTON: Did you show the company material south?

Mr. DIXON: It shows railroad material. That is what it all was in the last year—Southern Pacific.

Mr. COTTON: I will recall you to the stand for a moment.

359 A. C. DIXON resumed the stand further cross-examination:

Mr. COTTON: In connection with your testimony in the Eastern Lumber case, there was filed an exhibit of your shipments to various points and places, and under the Column I are shown shipments of railroad material. To what points did that railroad material go—railroad material other than east of the Missouri River?

Mr. DIXON: My impression now is that this was all shipped to points in California, with the exception of a portion of that shipment in the last two years; that it all went to the Southern Pacific Company, either at Oakland Long Wharf, or some point in Southern California.

Mr. COTTON: Then those shipments year by year, with the exception of shipments the last two years, were all made to the Southern Pacific Company?

Mr. DIXON: That is my impression. As I told you, in furnishing this, it was gotten up rather hurriedly, and if it is not correct I will correct it when I get home.

360 Mr. COTTON: It is approximately correct?

Mr. DIXON: I think so.

Mr. COTTON: Your sales to mills were comparatively small?

Mr. DIXON: Yes sir.

Commissioner PROUTY: That is, to any other railroad?

Mr. COTTON: Yes; I mean any other railroad. And during the last two years, of your stuff that went south, railroad material, was much of that to any other company?

Mr. DIXON: Well, I should say that 85 per cent. of it was to the Southern Pacific.

Mr. COTTON: And that was bought f. o. b. the mill?

Mr. DIXON: Yes sir.

Mr. COTTON: Can you give me a statement of the prices that were paid for that in various years, from the time you began doing business until the present time? That is, I do not mean each item, but of the grades. Take ties, and then better class lumber, an average statement for each year. Do you think you can furnish it?

361 Mr. DIXON: I think we filed that yesterday. Mr. Booth, at least, testified from a statement showing average prices, and I think it was filed here.

Mr. BOOTH: The one you filed from me covers that. The statement you took from me, filed as an exhibit, covering the various kinds of material, including ties.

Mr. COTTON: Then that is all right. Then the prices which appeared on that stuff, that I thought possibly was commercial stuff, are just about the same as the railroad prices?

Mr. BOOTH: It is designated as railroad, and also as commercial stuff.

Mr. COTTON: That is all, Mr. Dixon. I would like to have Mr. Dixon's exhibit that he referred to considered in evidence in this case. I will call Mr. Miller.

362 *Testimony on Behalf of the Defendants.*

R. B. MILLER, a witness produced on behalf of the defendants, being duly sworn, testified as follows:

Mr. COTTON: Mr. Miller, how long have you been engaged in the railroad business at Portland?

Mr. MILLER: Twenty years.

Mr. COTTON: During that time you have been connected with what company?

Mr. MILLER: The Southern Pacific and O. R. & N. Company.

Mr. COTTON: When was your first employment with the Southern Pacific?

Mr. MILLER: In 1900.

Mr. COTTON: How long were you employed in 1900 by the Southern Pacific?

Mr. MILLER: In 1900.

Mr. COTTON: How long were you employed in 1900 by the Southern Pacific?

Mr. MILLER: 1900 and 1901, about 9 months as General
363 Freight Agent of the lines in Oregon.

Mr. COTTON: You were purely a Southern Pacific officer at that time?

Mr. MILLER: Yes.

Mr. COTTON: Prior to that you had been employed by the Oregon Railroad and Navigation Company?

Mr. MILLER: Yes sir.

Mr. COTTON: In the freight office?

Mr. MILLER: Yes sir.

Mr. COTTON: When you left the Southern Pacific employ what did you do then?

Mr. MILLER: I became the General Freight Agent of the O. R. & N. Company.

Mr. COTTON: Did you aferwards resume your connection with the Southern Pacific Company?

Mr. MILLER: Yes sir.

Mr. COTTON: When?

Mr. MILLER: About 1904.

Mr. COTTON: And since 1904 you have had charge of the traffic of both lines?

Mr. MILLER: Yes sir.

Mr. COTTON: What is your title on the Southern Pacific line?

364 Mr. MILLER: General Freight Agent of the lines in Oregon.

Mr. COTTON: And on the O. R. & N.

Mr. MILLER: General Freight Agent.

Mr. COTTON: Have you been more or less familiar with the busi-

ness of the Southern Pacific Company since your first connection with it in 1899?

Mr. MILLER: Yes sir.

Mr. COTTON: Have the relations between the companies been such as to cause you to keep in touch with it to a greater or less extent?

Mr. MILLER: Yes sir.

Mr. COTTON: Mr. Miller, at one time I understand from this history that the rate of $3.10 applied from Portland, east Portland, to Saginaw, Coburg and Albany only, and was afterwards extended to other points. Was that $3.10 rate taken out to any points?

Mr. MILLER: Yes sir.

Mr. COTTON: To what points, first was it taken out?

Mr. MILLER: Well, it was advanced to $5 per ton from Portland on August 20, 1903, and advanced to $5 per ton from the
365 Willamette Valley, that is, points south of Portland, on January 1st, 1904.

Mr. COTTON: Have you a history of these rates? That seems to differ a little from Mr. Lewis'.

Commissioner PROUTY: It was stated yesterday by Mr. Cotton that the advance to Willamette Valley points was on January 1st, 1904, and restored in May, 1904.

Mr. DILLARD: August 20th, 1903, from Portland alone.

Mr. COTTON: Mr. Lewis' statement would show that on August 20. 1903 the rate from Portland to Glendale, East Portland, Portland and Jefferson was cancelled and raised to $5.

Mr. TEAL: That is right, and then a new tariff put in the same day, limiting it to just these points.

Mr. COTTON: I see now. Then you put in a $5 rate from Portland?

Mr. MILLER: On August 20th, 1903.

Mr. COTTON: How long did that $5 rate remain in force and effect from Portland?

Mr. MILLER: It was advanced on November 10th, 1903 to
366 $7.50 a ton.

Mr. COTTON: Then what became of it afterwards?

Mr. MILLER: On December 7th, 1903 it was reduced to $5 per ton, and has remained so ever since.

Mr. COTTON: Then since August 20, 1903 you have had no rate less than $5 from Portland on green rough lumber?

Mr. MILLER: To San Francisco Bay points.

Mr. COTTON: Did you have a lower rate from Portland on rough green lumber than $5 to other points in California?

Mr. MILLER: Yes sir.

Mr. COTTON: To what points?

367 Mr. MILLER: To points adjacent to San Francisco Bay. The rates in effect to those points range from three dollars and fifty-five cents per ton to four dollars and ninety cents per ton.

Mr. COTTON: With five dollars as a maximum?

Mr. MILLER: With five dollars per ton as a maximum. The reason for that was that while the company did not meet the water competition in San Francisco because of the very low rate, it did

partially meet that competition at points adjacent to San Francisco Bay, where a higher rate was obtainable.

Commissioner PROUTY: Just a minute, Mr. Cotton. You say your rate since August 20th from Portland has never been less than five dollars to San Francisco proper?

Mr. MILLER: Yes, sir.

Commissioner PROUTY: But that it has been less than five dollars to some points in the vicinity of San Francisco?

Mr. MILLER: Yes, sir.

Commissioner PROUTY: That was for the reason that you did not see fit to make a rate low enough to meet water competition at San Francisco, but did desire to meet water competition at points
368 where the water must pay a rail rate out from San Francisco?

Mr. MILLER: Yes, sir.

Commissioner PROUTY: Well, why should you not apply as low a rate to San Francisco as you apply anywhere, so that if a shipper from Portland can take advantage of it and desires to take advantage of it, he may.

Mr. MILLER: Well, we didn't regard the business as even desirable.

Commissioner PROUTY: Would it not be just as desirable to San Francisco as it would to some outlying point at the same rate?

Mr. MILLER: That might be, but we did not want to carry any San Francisco business on as low a basis, because in the first place the business was not desirable, and in the second place it required handling of the business in San Francisco proper—Bay transfer, switching, adding to the congestion or the conditions in the terminals; and altogether was not desirable even at the same rate, as was charged to an intermediate point.

Commissioner PROUTY: Are these points all intermediate points to which you made a lower rate than five dollars?

Mr. MILLER: Some of them are intermediate, and others
369 are on branch lines.

Commissioner PROUTY: They would all be reached without going to San Francisco?

Mr. MILLER: Yes, sir.

Commissioner PROUTY: And you did not care to go to San Francisco because it cost you more to handle traffic at San Francisco?

Mr. MILLER: Yes, sir.

Mr. COTTON: What do you mean by these San Francisco Bay points? That is a phrase we have used with an apparent knowledge on the part of people using it; but tell us what it means.

Mr. MILLER: San Francisco Bay points, so-called, are the points on San Francisco Bay that can be reached by vessels, can be served direct by vessels.

Commissioner PROUTY: Are they reached in all cases by your rails?

Mr. MILLER: Yes, sir.

Mr. COTTON: In order to get to these San Francisco Bay points, what do you have to do? How do you get the freight there by rail?

Mr. MILLER: Well, to San Francisco it requires a transfer
370 across San Francisco Bay.

Mr. COTTON: In what way?

Mr. MILLER: Car ferry.

Mr. COTTON: And how do you reach these other points?

Mr. MILLER: Oakland and Vallejo are reached by rail, but subject to car ferry across the Straits, and from Benicia to Port Costa, car ferry is required; in some instances one transfer, and in other cases two transfers by car ferry.

Mr. COTTON: Can you mention some of these other points, that is, what you call the points outside of San Francisco to which this $3.55-$4.90 rate applied? Just mention those.

Mr. MILLER: Well, there is Sacramento, Galt——

Commissioner PROUTY: Are those rates still in effect?

Mr. MILLER: No, sir.

Commissioner PROUTY: When were they withdrawn; last April?

Mr. MILLER: April 18th, last.

Commissioner PROUTY: So that now your five dollar rate applies to all this territory?

371 Mr. MILLER: Yes, sir.

Commissioner PROUTY: Why did you withdraw those rates at that time? Did you conclude not to meet water competition at those points even?

Mr. MILLER: Yes, sir; that is to say, we met the competition only in part.

Commissioner PROUTY: It would meet it only to the extent that the five dollar rate applied to all kinds of lumber?

Mr. MILLER: Yes, sir.

Commissioner PROUTY: That rate would meet it as to higher grades of lumber?

Mr. MILLER: Yes, sir.

Commissioner PROUTY: But it would not meet it as to the lower grades of lumber in all places?

Mr. MILLER: Yes, sir; that is correct.

Mr. COTTON: That is, it would not meet it merely on a rate basis?

Mr. MILLER: No; it would not meet it on a rate basis, and it would not hold all of the business to the rail lines. It would hold part of it, as a part of competition, but not all of it.

372 Commissioner PROUTY: Would you expect, Mr. Miller, from Portland, from Mr. Poulsen's mill, for example, where he might choose the way he would ship, by your line or by water, to get any of the San Francisco business on the present rates?

Mr. MILLER: Yes, sir.

Commissioner PROUTY: What part of it; what kind of lumber?

Mr. MILLER: Well, we would get a considerable part of the higher grades of lumber, and we would get some of the common grades of lumber.

Commissioner PROUTY: Under what circumstances would you expect to get any of the common grades of lumber?

Mr. MILLER: Well, in the case of special orders, and in cases

where the quantity desired by the consignee was not sufficient to load a vessel.

Commissioner PROUTY: Mr. Poulsen has his election to ship either by water or by rail?

Mr. MILLER: Yes, sir.

Commissioner PROUTY: And if he ships by water, he will still get the same price for his lumber, probably, as though he ships by rail?

Mr. MILLER: Yes, sir.

373 Commissioner PROUTY: But a manufacturer in the Willamette Valley who competes with Mr. Poulsen and who must ship by rail, would be obliged to take less for his lumber, would he not? That would be the effect of your tariff?

Mr. MILLER: Yes, sir.

Commissioner PROUTY: He would either be obliged to go out of business or take less for his lumber?

Mr. MILLER: To the extent of the difference of the rate by rail from the Willamette Valley and the rate by water from Portland.

Mr. COTTON: Mr. Miller, you were mentioning these other points to which this $3.55—$4.90 rate applies. You mentioned Galt. What are some of the others?

Mr. MILLER: Milton, Waterford, Madesta, Elmira, Santa Rosa, Alma, and intermediate points with San Francisco. These are the extreme points that I have mentioned.

Commissioner PROUTY: Just how did you get at your rates to those points, Mr. Miller? It seems that when you made a $3.10 rate to San Francisco, you also made a higher rate to these points?

Mr. MILLER: Yes, sir.

374 Commissioner PROUTY: And you reached that rate by adding to the $3.10 rate the local rail rate out from San Francisco?

Mr. MILLER: Yes, sir.

Commissioner PROUTY: Did you still continue to make your rate on that same basis to these outlying points?

Mr. MILLER: Yes, sir.

Commissioner PROUTY: You simply withdrew the rate to San Francisco, but you left the rate at the outlying points?

Mr. MILLER: Yes, sir.

Commissioner PROUTY: Fixed upon the same basis?

Mr. MILLER: Yes, sir; these points I have mentioned are the extreme points. Of course points nearer to San Francisco Bay would take a lower rate, relatively or proportionately, according to the local rate out of San Francisco?

Mr. COTTON: I think possibly you misunderstood the Commissioner, or I misunderstood you. What do you charge to Milton, Waterford, Madesta and these points now? What is your rate now?

Mr. MILLER: Five dollars per ton.

375 Mr. COTTON: You do not add the local on to the five dollars?

Commissioner PROUTY: No; those rates have all been withdrawn now. I was trying to get at the basis of the rates which he main-

tained to these points from Portland, as I understand, previous to 1907.

Mr. COTTON: He added the local then, but he does not add the local to the five dollars now.

Commissioner PROUTY: Not now. It is all five dollars now.

Mr. MILLER: The local was added to a basing rate, the $3.10 rate, which was not in effect. It was merely the basing rate.

Mr. COTTON: But now it is all five dollars?

Mr. MILLER: All five dollars now.

Mr. COTTON: Where are these points situated, Mr. Miller, in a general way?

Mr. MILLER: Well, they are points shown in this red here (indicating).

Mr. COTTON: Down as far as that (indicating)?

Mr. MILLER: Yes; those are the outlying points where we added the locals out from San Francisco, subject to a maximum of five dollars per ton.

376 Mr. COTTON: So down here in these points—is that Sacramento over here (indicating)?

Mr. MILLER: Here is Sacramento.

Mr. COTTON: Then in order to get your freight down here south of San Francisco, were the distances greater or less, or about the same, as to San Francisco proper, even into this territory that appears to be south?

Mr. MILLER: Well, I should say substantially the same. There was not much difference in the distance.

Commissioner PROUTY: You do not go through Sacramento in going from Portland to San Francisco, do you?

Mr. MILLER: The business can move around that way and in here (indicating), but it comes down this other way.

Mr. COTTON: There is Sacramento up there (indicating). Does all your business going to San Francisco from the north pass through Sacramento or not?

Mr. MILLER: Well, they have different routes in there for handling the business. I think probably it all does not go through Sacramento.

Mr. COTTON: But the shortest line to San Francisco from the north is through what point? I got my pencil on the wrong place.

377 Mr. MILLER: The shortest route, I think—the passenger traffic is all handled through Sacramento.

Mr. COTTON: There is Sacramento right there (indicating).

Mr. MILLER: Some of these trains go through Sacramento and others do not.

Mr. COTTON: These other places down in through here—where are these two car ferries you speak about? Where is the one?

Mr. MILLER: The one is from Benicia to Port Costa and the other is from Oakland to San Francisco.

Mr. COTTON: Then these two car ferries you speak about are south of Sacramento and in the direction of San Francisco but are not on the line around into this territory (indicating)?

Mr. MILLER: Yes, sir; that is true.

Commissioner PROUTY: What is your rate to Sacramento now?

Mr. MILLER: Five dollars per ton.

Commissioner PROUTY: Has the rate ever been lower than that to Sacramento?

Mr. MILLER: I think it has, if the local rate from San
378 Francisco to Sacramento was less than $1.90 per ton.

Mr. COTTON: Then in getting the freight down here into this territory (indicating), you dodge San Francisco and get away from the two car ferries?

Mr. MILLER: Yes, sir.

Mr. COTTON: The distance looks apparently longer, but as a matter of fact, the service is different, your Honor. Then for a period of from 1903 down, you have not undertaken to meet water competition from Portland except as your five dollar might from time to time meet it?

Mr. MILLER: Yes, sir; that is true. We do not altogether meet it. We meet it only in part.

Mr. COTTON: During 1906 and the early part of 1907, was your rail rate lower than the charter rate from Portland?

Mr. MILLER: It was.

Mr. COTTON: That is, from what date in 1906?

Mr. MILLER: Well, the charter rates became very high in the latter part of 1906, and continued so through part of 1907. They ran up to nine dollars and nine dollars and a half a thousand feet.

379 Mr. COTTON: That was due to the fire?

Mr. MILLER: That was due to the San Francisco fire and the lack of water tonnage—vessels.

Mr. COTTON: There was a considerable quantity moved by water, was there not?

Mr. MILLER: A very large quantity.

Mr. COTTON: Did the Southern Pacific ship much by water from Portland?

Mr. MILLER: The Southern Pacific shipped considerable tonnage by water, its own material.

Mr. COTTON: I would like in that connection, without stopping to read it now, to have the privilege of referring to Mr. Buehner's statement in the gate-way case. Mr. Teal remembers the testimony.

Mr. TEAL: That is perfectly satisfactory, because it is so. There is no question about it.

Mr. COTTON: And on that the Southern Pacific paid the schooner rate, whatever it was?

Mr. MILLER: Yes, sir.

Mr. COTTON: Did the $3.10 and the $5 rate continue in force and effect to the extent that you were able to move stuff from the
380 Willamette Valley during all this period?

Mr. MILLER: We were unable to move all the business.

Mr. COTTON: But the rate remained in effect?

Mr. MILLER: The rate remained in effect from the Willamette Valley.

Commissioner PROUTY: Mr. Miller, does any considerable quan-

tity of this lumber shipped from the Willamette Valley south over your line go, to any considerable extent, to San Francisco itself?

Mr. MILLER: Yes, sir.

Commissioner PROUTY: Do you know what part of it?

Mr. COTTON: Yes, sir, we have a statement about that. Now Mr. Miller, what is your basis of rates on other commodities to and from San Francisco and these adjacent points, from and to Portland and the Willamette Valley points? That is, state what your general basis of rates is both ways.

Mr. MILLER: For instance, from San Francisco, to points in the Willamette Valley, we make the rates by rail on the basis of the water rate, ocean rate, from San Francisco to Portland, plus the return local either by rail or by river steamers, as the case may
381 be, according to the destination.

Mr. COTTON: Now take from Albany—well, let us take from Eugene. What is your rate on merchandise from San Francisco to Eugene?

Mr. MILLER: It is the water scale of rates from San Francisco to Portland plus the rail rates from Portland to Eugene.

Commissioner PROUTY: So your rail rate from San Francisco to Portland would be lower than your intermediate rates, would it?

Mr. MILLER: Yes, sir.

Mr. COTTON: What is your merchandise rate generally; that is, on your class rates from Eugene to San Francisco?

Mr. MILLER: The same arrangement.

Commissioner PROUTY: Is most of your traffic on that line moved under class rates except this lumber?

Mr. MILLER: Very little moves under the class rates.

Commissioner PROUTY: It is mostly on the commodity rates?

Mr. MILLER: Yes, sir; very little under the class rates.

382 Mr. COTTON: Do you make commodity rates to Eugene on merchandise, sugar and that kind of stuff, based on water competition plus the local back?

Mr. MILLER: Yes, sir.

Mr. COTTON: The mere fact that it moves on commodity rates does not change the rate adjustment?

Mr. MILLER: No; we make the commodity rates because of the commodity rate made by the water from San Francisco to Portland.

Commissioner PROUTY: I wish you would file a statement showing your class rates from San Francisco to Portland and Eugene, and also your commodity rates from San Francisco to Portland and Eugene on half a dozen standard articles, like sugar.

Mr. COTTON: Now, from points interior in California to Portland, what rates do you make?

Mr. MILLER: Well, generally on the basis of the combination on San Francisco and Sacramento, or the point to which it is subject to competition of the water lines.

Mr. COTTON: Then from Eugene to a point down here (indicating), what would be your rate going north from Eugene or going south from Eugene to the same point?

Mr. MILLER: We would use whatever the rate might be
383 to or from San Francisco or Sacramento, added to the local there south.

Mr. COTTON: And then up north?

Mr. MILLER: The rate to Portland plus the local south.

Mr. COTTON: Then you built up into all these Willamette Valley points on the water competition and also built up to or from all these points south of San Francisco on the basis of water competition?

Mr. MILLER: Yes, sir.

Mr. COTTON: Does that apply generally to practically all classes of commodities other than lumber?

Mr. MILLER: Generally, yes; that is the case.

Mr. COTTON: I have used Eugene in my illustrations. Is your statement specific as to Eugene, or illustrative as to the Willamette Valley territory generally?

Mr. MILLER: It is illustrative as to the Willamette Valley generally. At Eugene, however, we will use the rail rate from Portland to Eugene or Eugene to Portland, in fixing the through rate to or from San Francisco Bay points: to points north of Eugene, like Albany or Salem. We would use the water basis of rates to
384 or from Portland, plus the water rates between Portland and Salem or Albany.

Mr. COTTON: Your rail rates are the same as the water, are they not?

Mr. MILLER: No; they are a little higher.

Mr. COTTON: Are there boats operating on the river?

Mr. MILLER: Yes, sir.

Mr. COTTON: The difference between the rail rates and the river rates, though, is not material?

Mr. MILLER: Just nominal.

Mr. COTTON: Do you know anything about the sugar rates from California to Eugene, for example?

Mr. MILLER: Yes, sir.

Mr. COTTON: Or Glendale? Glendale is down in the southern part of the state is it not?

Mr. MILLER: Yes, sir.

Mr. COTTON: Tell us what is the rate on sugar from San Francisco to Portland, or on any other commodity, you may have in your mind, something like that.

Mr. MILLER: The rate on sugar from San Francisco to Portland by water at the present time I think is fifteen cents per one hundred pounds.

385 Mr. COTTON: What do you charge to Glendale?

Mr. MILLER: Well, I don't know what the rate is from Portland to Glendale, but it must be around 65, 70 or 75 cents a hundred. 75 probably is nearer right.

Mr. COTTON: From Portland down to Glendale?

Mr. MILLER: Yes, sir.

Mr. COTTON: So you have about 15 cents from San Francisco to Portland and 90 cents from San Francisco to Glendale?

Mr. MILLER: Yes, sir; 15 cents is the water rate. The rate by rail from San Francisco to Portland is about 18 cents a hundred pounds.

Commissioner PROUTY: You make that a commodity rate?

Mr. MILLER: We make that a commodity rate; yes, sir.

Commissioner PROUTY: Would you carry sugar from San Francisco to Glendale on a commodity rate or a class rate?

Mr. MILLER: We would carry it on a commodity rate, based on the commodity rate to Portland plus the return movement.

Mr. COTTON: Making your rate from San Francisco to Glendale about 90 cents a hundred?

386 Mr. MILLER: From San Francisco; yes, sir.

Mr. COTTON: On sugar?

Mr. MILLER: Yes, sir.

Mr. COTTON: How far is Glendale south of Portland?

Mr. MILLER: About 250 or 275 miles.

Mr. COTTON: Can you give the Commission a notion about any other commodity? Sugar is a commodity that moves from San Francisco in quite large quantities, does it not?

Mr. MILLER: Yes, sir.

Mr. COTTON: That is, in considerable quantities?

Mr. MILLER: It moves in large quantities.

Mr. COTTON: Can you take any other standard commodity that moves from California into these Willamette Valley points and give us the rates on it?

Mr. MILLER: Well, canned goods is a commodity that moves in some volume. The conditions with respect to canned goods are similar to sugar.

Mr. COTTON: Give us the rate on canned goods from San Francisco to Eugene or Glendale for example, both of them.

Mr. MILLER: The rate on canned goods from San Fran-

387 cisco to Eugene or Glendale would be the water rate from San Francisco to Portland, which is fifteen cents per hundred pounds, I think, or about that, plus the return local.

Mr. COTTON: What is the return local to Eugene?

Mr. MILLER: To Eugene it is about 25 or 30 cents per hundred pounds.

Mr. COTTON: And what is it down to Glendale?

Mr. MILLER: About 75, the same as on sugar.

Mr. COTTON: I wish you would file with the Commission your local tariffs from Portland into this territory south, and in order to show what you add, this ocean competition rate in order to reach these points and places, and also file your lumber tariff from these points and places into Portland.

Commissioner PROUTY: Do not file all your local tariffs, Mr. Miller. File your class tariff and then pick out a half dozen commodities and give us grades on those.

Mr. COTTON: I am just trying to show where we get our rates largely from on this road. Are these rates which you have given here higher or lower than the rates which prevail in the

388 northwest generally on merchandise—these lumber rates you have been speaking about?

Mr. MILLER: The rates out of Portland on the Southern Pacific are generally lower than obtain elsewhere in the northwest country.

Mr. COTTON: I wish you would file a comparison. I think there was a comparison filed, was there not, in the Spokane rate case? Did you show the Southern Pacific rates in that?

Mr. MILLER: We made a comparison, but I don't think it was filed with the Commission, although I don't know.

Mr. COTTON: I do not think the Southern Pacific rates were compared.

Commissioner PROUTY: No; the O. R. & N. rates.

Mr. COTTON: I would like you to add to that comparison which you made in the Spokane rate case, the Southern Pacific rates for similar distances, just supplementing that comparison, and then file the whole complete comparison with the Commission.

Mr. TEAL: Mr. Miller, in order to save time, in these things that you file, will you furnish me with a copy at Portland?

Mr. MILLER: Yes, sir.

389 Mr. COTTON: Mr. Miller, do you know what the total shipments of lumber via the Southern Pacific to all these points and places were in 1898?

Mr. MILLER: Yes, sir.

Mr. COTTON: How many cars?

Mr. MILLER: 2168 cars via Ashland. There was no movement via Portland at that time.

Mr. COTTON: In 1906 how many cars of commercial lumber moved from Oregon via the Southern Pacific lines?

Mr. MILLER: Nine thousand——

Mr. COTTON: In 1906, commercial lumber.

Mr. MILLER: There were 13,140 cars.

Mr. COTTON: Now, have you a statement showing the distribution of those cars and where they went to?

Mr. MILLER: Yes, sir.

Mr. COTTON: To San Francisco Bay points from Portland, how many cars?

Mr. MILLER: 699.

Mr. COTTON: To Bay District points from Portland?

Mr. MILLER: 1015.

Mr. COTTON: To other California points from Portland?

Mr. MILLER: 1463.

Mr. COTTON: To Utah, Nevada and Arizona via Ashland?

390 Mr. MILLER: 161.

Mr. COTTON: Now, from points south of Portland, that is, all Willamette Valley points, how many cars to San Francisco Bay points?

Mr. MILLER: 1494.

Mr. COTTON: To Bay district points?

Mr. MILLER: 391.

Mr. COTTON: To other California points?

Mr. MILLER: 1363.

Mr. COTTON: To Utah, Nevada and Arizona via Ashland?

Mr. MILLER: 159.

Mr. COTTON: Then to San Francisco Bay points there were shipped 1494 as against something over seventeen hundred cars to Bay district points and other California points from Willamette Valley points. Is that right?

Mr. MILLER: Well, there was 1494 to San Francisco Bay points and 391 cars to points adjacent to San Francisco Bay.

Mr. COTTON: And how many to other points in California?

Mr. MILLER: 1363.

391 Mr. COTTON: In the meantime, when you were transporting about 3100 cars to points south via Ashland, how many cars moved north from Willamette Valley points to the east via Portland, during the same period?

Mr. MILLER: 1906?

Mr. COTTON: Yes.

Mr. MILLER: The movement from points south of Portland to the east via Portland and the O. R. & N. was 6,395 cars.

Mr. COTTON: I think that is all practically read in, but would like to have that statement copied. It is in tabulated form, and might be a little more convenient in picking it out from the testimony.

(The statement referred to is as follows:)

	From Portland.	From points south of Portland.	Total.
To San Francisco Bay Points...	699 cars	1494 cars	2193 cars
Bay District Points.....	1015 "	391 "	1406 "
Other California Points.....	1463 "	1363 "	2826 "
Utah, Nev. Ariz. via Ashland..	161 "	159 "	320 "
Points beyond Portland.....	.....	6395 "	6396 "
Total.....	3338 "	9802 "	13140 "

392 Mr. COTTON: I see you have given me a statement to the effect that during 1906, 1885 cars of the shipments made by the complainants were destined to the territory affected by the advance of April 8, 1907. What do you mean by that. Is that so?

Mr. MILLER: I mean to say that of the movement from points south of Portland to San Francisco Bay points and the points adjacent to San Francisco Bay, there moved 1885, or 19 per cent., of the total movement of lumber south and east via Portland from points south of Portland.

Mr. COTTON: Then of the total shipments made from the Willamette Valley during 1906, amounting to 9802 cars of commercial lumber, there were only 1885, cars that moved to points or places affected by this advance in rate complained of?

Mr. MILLER: Yes, sir; and more or less of that business of the 1885 cars paid the rate of five dollars per ton, but I have no way of segregating that as between the five dollar rate and the business that paid a lower rate.

Mr. COTTON: Do you know what the rate situation was prior to April 22, 1899? Have you looked into that?

Mr. MILLER: Yes, sir.

393 Mr. COTTON: What were the rates?

Mr. MILLER: The rate of $3.10 per ton was established on April 22, 1899 to San Francisco——

Mr. COTTON: I said what was it prior to that.

Mr. MILLER: On April 25 1898, the rate from Portland to San Francisco, Oakland and Vallejo Junction was four dollars per ton.

Mr. COTTON: What was it from Portland to any other point or place?

Mr. MILLER: The rate to Sacramento and to certain intermediate points was five dollars per ton.

Mr. COTTON: What was the rate prior to April 22, 1899 from Albany, Coburg and Saginaw?

Mr. MILLER: There does not appear to have been any rate in effect prior to June 6th, 1898 from points south of Portland.

Mr. COTTON: What was that rate?

Mr. MILLER: But on June 6th 1898, apparently, the rate from Albany, Coburg and Saginaw was made the same as from Portland, or four dollars per ton, to San Francisco, and five dollars per ton to Sacramento and certain other intermediate points.

Mr. COTTON: That was put in then at four dollars?

394 Mr. MILLER: Yes, sir.

Mr. DILLARD: In June 1898.

Mr. COTTON: Yes, in June. Then prior to April 22, 1899 you had a four dollar rate only to San Francisco, Oakland and Vallejo—all points on San Francisco Bay?

Mr. MILLER: Yes, sir.

Mr. COTTON: Then in addition to that, to any other point or place, of course, you added the local out?

Mr. MILLER: Yes, sir.

Mr. COTTON: So prior to the time when this four dollar rate was put in, followed shortly afterwards by the three dollars and ten cent rate, you had the same adjustment of rates in California on lumber, substantially, that you have now, namely, the adding on to the water rate?

Mr. MILLER: Yes, sir.

Mr. COTTON: Or what you regarded as the rate from Portland to Bay points?

Mr. MILLER: Yes, sir.

M[illegible]OTTON: It might have met water competition, and it might not, just depending on what the rates were?

Mr. MILLER: Yes, sir.

395 Mr. COTTON: Do you know what the charter rates were in 1900 as compared with the charter rates now, as an average proposition? Were they higher or lower?

Mr. MILLER: I don't know what the charter rate was in 1900.

Mr. COTTON: It has been testified to by some of the other people. Do you know what the grade is over the elevation where you cross the Siskiyou Mountains, how many feet it is?

Mr. MILLER: There is a maximum grade there of 174 feet to the mile.

Mr. COTTON: What elevation do you reach?

Mr. MILLER: About forty-one hundred feet, in crossing the Siskiyou.

Mr. COTTON: Have you been over there on passenger trains?

Mr. MILLER: Yes, sir.

Mr. COTTON: How many engines does it take to pull a passenger train of 12 cars up that hill; that is, of the class of engines they are using there?

Mr. MILLER: Three engines.

Mr. COTTON: State whether or not you have ever regarded
396 this $3.10 rate as re*numer*ative of affording any compensation to the company, and what, if any discussion you have had about this rate with shippers and if so, whom and when?

Mr. MILLER: I have never regarded the rate as re*numer*ative. I have had discussions with a number of the shippers. I have advised them that I thought the rate was unreasonably low. I recall one conversation in particular with Mr. Booth, which I had with him in 1900 or 1901, during a trip I had made over the line, my initial trip over the Southern Pacific. I told him the rate was very low, and I thought he had better devote his attention to the eastern business, because I did not think that rate would continue indefinitely to California.

Mr. COTTON: When were the rates to the east, points east of Colorado, extended into the Willamette Valley, in what year?

Mr. MILLER: Well, they were in effect to Colorado in 1901. They may have been in effect to Colorado prior to that time, but I can't say.

Mr. COTTON: When were they extended to points east of Colorado?

Mr. MILLER: They were established to the Missouri River on
397 July 15, 1901, and they were established to Chicago and St. Louis on July 15, 1901, but were cancelled, withdrawn, very soon thereafter via the Southern route, that is, via Shasta. For what reason they were withdrawn at that time, I don't know.

Mr. COTTON: When you extended them to the Missouri River, of course that took them into the entire territory east of the Missouri River?

Mr. MILLER: I am referring to the movement now south through Ashland. They were established via Portland—from the Willamette Valley to Utah, Colorado, Nebraska and Kansas on August 24, 1901.

Commissioner PROUTY: This rate from Willamette Valley is the same as the rate from Portland to Colorado common points?

Mr. MILLER: Yes, sir.

Commissioner PROUTY: Is it the same to Salt Lake City?

Mr. MILLER: Yes, sir.

Commissioner PROUTY: There is a territory west of Pocatello in which it is not the same?

Mr. MILLER: Yes, sir.

Mr. TEAL: It applies to all territory taking the forty cent rate or
398 higher, Mr. Prouty. I will say in regard to that that prior to the time the rate was reduced to four dollars, I see from a memorandum I have here it was five dollars from Portland

and East Portland to San Francisco, Oakland and Vallejo Junction. That was up to sometime in April or May, 1898. I have not the tariff reference, but the memorandum shows that fact, and it was reduced to four dollars in June. I would like to have the right to refer to these tariffs to show the exact history of the rates. They are all on file.

Mr. COTTON: It all appears from the tariffs on file with the Commission. Mr. Miller, prior to some date in 1901, which I have now lost——

Mr. MILLER: August 24th.

Mr. COTTON: There were no rates in effect from this Willamette Valley territory to Colorado or to points east of Colorado?

Mr. MILLER: Not via Portland.

Mr. COTTON: Well, were there via San Francisco to points east of Colorado?

Mr. MILLER: Yes, sir.

Mr. COTTON: How long prior to this date in 1901—I am not taking August; I am taking the earliest dates, you gave.

399 Mr. MILLER: Well, they were in effect via Ashland to Utah, Colorado, Nebraska and Kansas on August 24, 1901. How much earlier than that. I don't know.

Commissioner PROUTY: Were those rates the same as from Portland?

Mr. MILLER: I think they were; yes, sir.

Mr. COTTON: I wish you would investigate and file a little statement showing the fact in that regard.

Commissioner PROUTY: When those rates were first put in, when they were taken out, and whether they were the same as the Portland rates.

Mr. COTTON: I want to show, because everybody seems to be a little hazy about it—I noticed Mr. Dixon was a little uncertain, and all the rest of us are—the exact history as to that.

400 Mr. Miller, speaking generally, has the empty car haul as you have known it been north or south from this Willamette territory—speaking generally. I do not care about figures just now, because I am going to furnish the exact figures.

Mr. MILLER: On traffic through Ashland, it has been north.

Mr. COTTON: To any considerable preponderance, north always?

Mr. MILLER: Yes sir.

Mr. COTTON: Well, speaking generally, what relation would you think the north-bound empty car haul preponderated?

Mr. MILLER: The preponderance of tonnage is very much in excess south-bound. For every three loaded cars south bound, I think we haul one empty north.

Mr. COTTON: Has that always been true substantially since you have known the road?

Mr. MILLER: The preponderance has always been very much south-bound.

Mr. COTTON: That is, the preponderance of loads?

Mr. MILLER: Yes sir.

401 Mr. COTTON: There has been no substantial change in these later years, has there, specially, one way or the other?

Mr. MILLER: No; I don't think there has.

Mr. COTTON: Why is that? Why has that preponderance always been southbound?

Mr. MILLER: That is due to the fact that there is a considerable volume of tonnage moving from the Willamette Valley into California by rail, but little tonnage moving from California into the Willamette Valley by rail.

Mr. COTTON: By the Willamette Valley, do you include Portland, or exclude it?

Mr. MILLER: We include Portland.

Mr. COTTON: That is in the statement?

Mr. MILLER: Yes sir.

Mr. COTTON: How does most of your merchandise from California get to Portland?

Mr. MILLER: It moves by water.

Mr. COTTON: And so this lumber has not increased its outbound tonnage, or has it?

Mr. MILLER: It has very materially increased the south-
402 bound tonnage.

Mr. COTTON: That is, it has increased it, has it?

Mr. MILLER: Yes sir.

Mr. COTTON: But at all times the preponderance has been strongly southbound?

Mr. TEAL: You meant to ask him if it had increased the northbound tonnage, did you not?

Mr. COTTON: No.

Mr. TEAL: Yes; you meant whether it had increased the merchandise movement north; did you not?

Mr. COTTON: No; I meant whether it had increased the preponderance of the loads south-bound.

Mr. MILLER: Yes sir; it has increased the preponderance southbound very materially.

Mr. COTTON: Can you estimate about how many empties you have to haul for your loads now? About one out of three?

Mr. MILLER: About one out of three. I will tell you definitely in a moment. Yes sir; for every three carloads sent south, we haul one empty north.

Mr. COTTON: I have here a statement showing the rate per ton per mile and the distances from San Francisco to Albany,
403 Coburg, Springfield, Newburg and Cottage Grove, over which the traffic moves?

Mr. MILLER: Yes sir.

Mr. COTTON: I will have that copied in. It may be more convenient to have it in the record. It is just to save a little calculation, Mr. Teal.

Mr. TEAL: Yes. May I ask whether this is on the $3.10 scale or on the new rate?

Mr. MILLER: The new rate.

Mr. TEAL: It does not show in this statement.

The paper referred to is as follows:

"16. The following points may be considered as fairly representing the average distance hauled:

Elevation.		Distance to San Francisco.	Rate per ton per mile.
240 ft.	Albany	666	.0075
475 "	Springfield	623	.008
340 "	Dallas	708	.007
193 "	Newberg	739	.0067
669 "	Cottage Grove	602	.0083
	Average	668	.0075

Mr. COTTON: Mr. Miller, I see in 1906 for example you
404 received at Ashland 7589 empties? Is that right?

Mr. MILLER: Yes sir.

Mr. COTTON: And delivered to them 690 empties?

Mr. MILLER: Yes sir.

Mr. COTTON: You therefore received something over ten times as many empties as you delivered to them.

Mr. MILLER: Yes sir; but the empties——

Mr. COTTON: I was going to ask you what those 690 empties were, and why they went back empty?

Mr. MILLER: They were almost entirely tank cars that came up with fuel oil.

Commissioner PROUTY: That is your own oil, your own fuel?

Mr. MILLER: Not altogether, no sir. I think most of our own oil, or a considerable part of it, is delivered to us at Portland from tank steamers.

Mr. COTTON: Have we over at St. Johns large oil tanks?

Mr. MILLER: Yes sir.

Mr. COTTON: Do you know what the capacity is?

Mr. MILLER: No, I do not, but they are very large tanks.

Mr. COTTON: And to those tanks, state what is delivered
405 and how it gets there?

Mr. MILLER: Oil at those tanks is delivered by vessel from California, pumped into those tanks, and then when the oil is shipped out by rail, it is run into the tank cars?

Mr. COTTON: Do we get our oil supply there? Do we have our own tanks there?

Mr. MILLER: No; we do not. Our oil has been supplied by these companies there, the oil having been transported by steamers into these tanks, and we also receive some oil by rail from California.

Mr. COTTON: Yes, but I am talking about the fuel oil supply which we use on the O. R. & N., to the extent that we use it, and the fuel oil supply which we use out of Portland.

Mr. MILLER: Of course the situation of the O. R. & N. is somewhat different. I was referring to the Southern Pacific.

Mr. COTTON: I am talking now about the fuel oil supply which is

used on both roads. We burn some fuel oil on the O. R. & N., do we not?

Mr. MILLER: Yes sir.

406 Mr. COTTON: In the engines?

Mr. MILLER: Yes sir.

Mr. COTTON: How does that get to Portland?

Mr. MILLER: Most of that oil comes up by rail from San Francisco, and some of it is secured at Albino where the oil is delivered by steamer into these tanks.

Mr. COTTON: The bulk of it is intended to come which way, if you know?

Mr. MILLER: The bulk of that oil, I think moves up by steamer into the tanks.

Mr. COTTON: Do you know where the oil comes from?

Mr. MILLER: Well, some of it has come from Richmond, in California.

Mr. COTTON: Where is Richmond?

Mr. MILLER: Across the Bay from San Francisco and a very large part of it has come from the Associated Oil Company, whose wells are located in the interior of California, moved by rail.

Mr. COTTON: So the Southern Pacific and O. R. & N. are burning at Portland a fuel oil supply which reaches Portland by steamer and not by rail, as a rule?

Mr. MILLER: Yes sir.

Mr. COTTON: Why do they not transport it by rail?

407 Mr. MILLER: Because it can be transported by steamer on a lower basis. Most of the oil moves by water.

Mr. COTTON: Then you do not undertake to compete with the steamers for your own fuel supply on these roads?

Mr. MILLER: No; I think not.

Mr. COTTON: These big tanks are located on the water, on the Willamette River?

Mr. MILLER: Yes sir.

Mr. COTTON: Located on the St. Johns branch of the O. R. & N.?

Mr. MILLER: Yes sir.

Mr. COTTON: Do we not own our own tanks there?

Mr. MILLER: I don't know, but I think not.

Mr. COTTON: I would like to show that we do. I thought Mr. Miller was familiar with those facts. I know them, and I would like, with Mr. Teal's permission, to produce an affidavit to show the oil contracts.

Commissioner PROUTY: What do you understand the fact is, Mr. Cotton?

Mr. COTTON: I understand the fact is—I would just as soon testify to it.

Commissioner PROUTY: Just state it.

408 Mr. COTTON: I understand the fact is that the intention was to move that stuff by water, that is, to Portland. Of course further south it was intended to move it by rail, say to Roseburg and Ashland; but up there it was intended to move it by water for the O. R. & N. and Southern Pacific. Therefore we contracted

to build our tanks, the stuff to be transported to these tanks by steamer.

Commissioner PROUTY: But you own your own tanks there?

Mr. COTTON: Yes sir.

Commissioner PROUTY: Do you understand most of the oil taken onto the engines at Portland is brought there by water?

Mr. COTTON: I think the bulk of it came there by water, but a quantity of it came there by rail, owing to the fact that the steamer did not come in as promptly as it should, and did not give us as good service. We had a low price from the oil company, and the commercial price in Portland and Seattle caused the oil companies to hold back deliveries, and we had to transport some by rail.

Commissioner PROUTY: Mr. Teal, you do not care to have
409 that corroborated by an affidavit?

Mr. TEAL: Not at all; neither by his oath or anything else.

Commissioner PROUTY: Let it stand as a statement of fact.

Mr. COTTON: I just want to show the general fact that we do not want to try to meet water competition on that kind of stuff. Mr. Miller, do you know anything about the character of the Southern Pacific line through Cow Creek Canyon?

Mr. MILLER: Yes sir.

Commissioner PROUTY: Whereabouts is that?

Mr. MILLER: That is down about 275 miles south of Portland. It is between what we call the Umpqua Valley and the Rogue River Valley.

Commissioner PROUTY: Is that near Portland?

Mr. MILLER: Yes sir.

Commissioner PROUTY: Which side of Ashland?

Mr. MILLER: It is north of Ashland, between Roseburg and Ashland—between Roseburg and Grand Pass.

Mr. COTTON: What about the physical features of the road through that Cow Creek Canyon, as to operations?

410 Mr. MILLER: Well, the road goes through a very narrow Canyon. The Creek is very swift. Frequently during the winter months it gets very high and tears out the banks. The road has occupied both sides of the river, being obliged to move from one side to the other on account of the washouts and slides. It is a very bad piece of road.

Mr. COTTON: Do you know what the distance is over which these difficulties are experienced?

Mr. MILLER: Yes sir; I can tell you. 25 to 30 miles will take us through the canyon.

Mr. COTTON: Are these difficulties you refer to peculiar to special years?

Mr. MILLER: No; we have trouble there nearly every year, from either high water, or from slides and washouts.

Mr. COTTON: Washed out during what seasons of the year?

Mr. MILLER: Usually in the winter months.

Mr. COTTON: Any particular special month in the winter?

Mr. MILLER: No; it runs through the winter, usually.

Mr. COTTON: Taking down to the Willamette Valley
411 proper, through Eugene and Santiam, down in the flat country, do you have any water difficulties?

Mr. MILLER: Yes sir.

Mr. COTTON: Is that unusual?

Mr. MILLER: No; we frequently have trouble there from water troubles.

Mr. COTTON: How many bridges did you lose last year; do you know?

Mr. MILLER: Well, we lost the bridge across the Santiam.

Mr. TEAL: Was that when they were building it?

Mr. MILLER: I think that bridge was being rebuilt at the time; but the bridge went out, and has not since been rebuilt.

Mr. COTTON: Did you lose a bridge in the vicinity of Jefferson?

Mr. MILLER: Yes; there was trouble there on the Willamette.

Mr. COTTON: How big a bridge is this bridge at Jefferson, for example? Is it a steel bridge?

Mr. MILLER: I don't know whether the bridge at Jefferson was a steel bridge or not. The one across the Santiam was a wooden
412 bridge.

Mr. TEAL: You have got two bridges, one across the Santiam and one across the Jefferson. Will you please tell me what is the difference between the Santiam bridge and the Jefferson bridge? Are they not the same bridge?

Mr. MILLER: No; the Santiam Bridge I refer to is over on the Woodburn-Springfield branch.

Mr. COTTON: That is between Crabtree and Tallman, Mr. Teal. That bridge went out too, and has never been replaced. They are both over the Santiam, but we have been in the habit in our correspondence of calling one the Santian bridge and the other the Jefferson bridge, in order to distinguish them conveniently, without using so much circumlocution. Do you know about the length of this bridge at Jefferson, Mr. Miller?

Mr. MILLER: I don't just recall that bridge at Jefferson, the length of it and character of its construction.

Mr. COTTON: You do not know the length?

Mr. MILLER: No.

Mr. COTTON: Would you undertake to guess at it?

Mr. MILLER: No; I would not.

413 Mr. COTTON: You have washouts then through the Willamette Valley?

Mr. MILLER: Yes sir.

Mr. COTTON: That is, the creeks and rivers or small rivers. They are not large rivers, are they?

Mr. MILLER: No; outside of the Willamette. The others are small in the Willamette Valley.

Mr. COTTON: All those streams rise in the mountain districts, do they not?

Mr. MILLER: Yes sir.

Mr. COTTON: And for that reason they have more or less tendency

to floods, all through down on that road until you get through the Cow Creek Canyon?

Mr. MILLER: Yes.

Mr. COTTON: Do you have high water in the Willamette Valley, impending your operations, in the vicinity of Oregon City?

Mr. MILLER: Well, not at Oregon City. I don't know that the high water there has ever troubled us, by rail.

Mr. COTTON: You run through that water? It is back water?

414 Mr. MILLER: At Oregon City?

Mr. COTTON: Yes.

Mr. TEAL: I will admit, Mr. Cotton, that two or three times there was backwater there. That is all it amounts to. It is back water.

Mr. COTTON: But it took a big gang of men, and we ran in water to the car steps, for two or three weeks.

Commissioner PROUTY: Don't take up unnecessary time with that, Mr. Cotton.

Mr. COTTON: It is practically a flood country all through that territory, to a very great extent?

Mr. MILLER: Yes; the water gets very high there.

Mr. COTTON: How about gathering up these loads and taking them down to California from this Willamette Valley territory. Does the movement come in large quantities and regularly from all these small mills scattered throughout the valley?

Mr. MILLER: No; the movement spreads over the whole year. It ran last year about 7,000 cars south through Ashland.

Commissioner PROUTY: It is a pretty regular movement, Mr. Miller?

415 Mr. MILLER: Well, no. It is heavier at times than it is at other times, although we transport lumber down there the entire year, but it is heavier at sometimes that it is at other times.

Mr. COTTON: I mean does it come regularly from these mills? Where are these mills situated? In the valley proper? Just describe the Willamette Valley down to say, Albany. Is that an agricultural country or a wooded country, along the main line of the Southern Pacific?

Mr. MILLER: That is an agricultural country.

Mr. COTTON: Extending as an agricultural country generally for about how many miles on each side of the main line, would you say?

Mr. MILLER: Down to Eugene, which is at the head of the Willamette Valley, about 125 miles.

Mr. COTTON: How far does the agricultural country spread out on each side of the main line?

Mr. MILLER: From four to ten or 12 miles.

Mr. COTTON: Does this Woodburn line down here, off on this side (indicating), run through an agricultural country or a wooded country?

416 Mr. MILLER: Well, both.

Mr. COTTON: Where is the wooded end of it?

Mr. MILLER: The southern part of it runs through more or less timber, timber reasonably close.

Mr. COTTON: And the northern end?

Mr. MILLER: Well, there is some timber in the northern end. There are mills located there.

Mr. COTTON: Large or small?

Mr. MILLER: They are small mills.

Mr. COTTON: Now, about this Corvallis line. Is that line down to Corvallis an agricultural country or a wooded country?

Mr. MILLER: That is an agricultural country.

Mr. COTTON: You get this lumber from these mills except Salem either on the extreme east side or the extreme west side. Is not that about the fact?

Mr. MILLER: Yes.

Mr. COTTON: I am speaking generally. I am trying to get a general notion of the country. Mr. Miles, I understand, has a mill at Salem to which he pulls logs in?

Mr. MILLER: Yes sir.

417 Mr. COTTON: But that is not true of people otherwise along the main line of the Southern Pacific, until you get down to pretty nearly the head of the Valley?

Mr. MILLER: That is true.

Mr. TEAL: I think Mr. Dixon testified the timber region was on each side of the valley.

Mr. COTTON: That is true, but I wanted to get it specifically with relation to the line.

Mr. TEAL: There is no question about that.

Mr. COTTON: Then in gathering this lumber, what kind of service do you perform; branch line service, or main line service?

Mr. MILLER: Well, from the Woodburn-Springfield branch and the west side branches, of course it is branch line service up to the main line.

Commissioner PROUTY: Do you think there is any reason why a higher rate should be applied on the west side then upon the east side:

Mr. MILLER: Yes; I do.

Commissioner PROUTY: You think your old adjustment, applying 25 cents a ton higher, is reasonable, do you?

Mr. MILLER: Yes sir.

418 Mr. COTTON: Will you state why?

Mr. MILLER: Because if we use the Corvallis & Eastern road to get to the main line, we are obliged to pay the Corvallis and Eastern 25 cents a ton for the transfer from the west side to the east sidelines.

Commissioner PROUTY: Is that true now?

Mr. MILLER: Yes sir; that is true to-day. Or, in the event that we don't care to use the Corvallis and Eastern for that service, we bring the business into Portland and then take it south on the main line.

Commissioner PROUTY: There would be a back pull there?

Mr. MILLER: Yes sir; but rather than perform that back haul we

take the business around and deliver it to the Corvallis and Eastern for the transfer and pay them 25 cents a ton for that service.

Mr. COTTON: You took it around by the Corvallis & Eastern for how many years, and paid them this 25 cents?

Mr. MILLER: That arrangement has been in effect for a number of years.

Mr. COTTON: Do you regard it as a reasonable charge for the use on their road?

419 Mr. MILLER: Yes; I do. They charge us higher than that on traffic other than lumber.

Mr. COTTON: What do they charge you on traffic other than lumber?

Mr. MILLER: 40 cents per ton, I think.

Commissioner PROUTY: How many miles do they haul the traffic?

Mr. MILLER: About 11 or 12 miles.

Mr. COTTON: You understand that somebody connected with the Harriman interest has purchased the Corvallis & Eastern?

Mr. MILLER: Yes sir.

Mr. COTTON: Do you see any particular reason why the Corvallis & Eastern's revenues should be shrunk that much just to get this stuff off the west side easily? ?

Mr. MILLER: As General Freight Agent of the Corvallis & Eastern, I don't think I would carry the freight free for the Southern Pacific.

Mr. COTTON: Mr. Teal laughs, but do you see any particular reason why——

Mr. TEAL: You don't know what I was laughting at.

Mr. COTTON: I assume you laughed because the general

420 feeling is that every time a big road buys a branch, they must throw away every branch line revenue that the former one would have gotten.

Mr. MILLER: There is absolutely no reason why the Corvallis & Eastern Road should perform any service for the Southern Pacific in connection with the handling of commercial traffic at less than what would be a reasonable rate for the service performed?

Commissioner PROUTY: Is that road still operating independently?

Mr. MILLER: It is operating independently, but by the officers of the Southern Pacific Company. Its accounts are separate, and it is a separate concern.

Mr. COTTON: Now take the Jefferson street line. How do you hook the Jefferson street line up with the main line of the Southern Pacific? How do you have to get freight out of there?

Mr. MILLER: We bring that freight to Portland——

Commissioner PROUTY: Is the Jefferson Street Line on the east side or west side?

Mr. MILLER: It is on the west side.

Mr. COTTON: It is the line nearest the river.

421 Mr. MILLER: We either take it over to the west side division and bring it into Portland, or we take it south into Corvallis and Albany, in connection with the Corvallis & Eastern.

Commissioner PROUTY: This high rate is applied to the Jefferson Street line as well as the east side, is it?

Mr. MILLER: Yes, sir; or we take the freight to Monmouth and handle it in connection with Independence, in connection with the Independence & Monmouth road.

Mr. COTTON: Now, down here at the south end of your road you built what we call the Springfield cut-off, did you not?

Mr. MILLER: Yes sir.

Mr. COTTON: That is the line that connects this extreme east side line with the main line of the Southern Pacific. Did that require the construction of a bridge in order to connect those two?

Mr. MILLER: It did, across the Willamette River.

Mr. COTTON: Do you know, from recollection, how much that line cost?

Mr. MILLER: No, I do not.

422 Mr. COTTON: I would like to file a statement in regard to that. It is quite an extensive bridge, is it not, Mr. Booth?

Mr. BOOTH: Yes sir; it is. It is two old bridges brought together and used together.

Mr. COTTON: But I refer to the construction.

Mr. BOOTH: The length of the bridge is about 400 feet.

Mr. TEAL: It cost, as I remember it, between $300,000 and $400,000. Mr. Cotton makes fun of my statistics, but I think I can tell what it cost.

Mr. COTTON: I think the line altogether cost about $500,000 to build over there. Take it up at Oswego. Are they building a connecting line so as to get a more convenient connection from the west side lines over to the Southern Pacific?

Mr. MILLER: Yes sir.

Mr. COTTON: They are building how many miles over at Beaverton, over to the other line?

Mr. MILLER: They are building from Beaverton across the river to connect with the east side line. I don't know how much is involved in that line.

423 Mr. COTTON: That involves the construction of a bridge across the Willamette River near Portland?

Mr. MILLER: Yes sir.

Mr. COTTON: I would like to file a statement as to the cost of that construction. The point I am trying to illustrate, your Honors, is either that there must be increased money spent in order to conveniently get this traffic out of the country without taking it all the way around Robin Hood's barn, or else increased service must be performed. To get that timber out, we have got to get it off these extreme east and west side lines and get it onto the main line in some convenient way.

Mr. TEAL: It is simply to cheapen operating expenses and make it more convenient to tie up the two lines, is it not, Mr. Cotton?

Mr. COTTON: Yes; but as we cheapen these operating expenses, we are necessarily going to throw away certain mileage on the road over which traffic does not move.

Mr. TEAL: I do not think the shippers have anything to do with that.

Mr. COTTON: I think that is purely a matter of argument.
424 I understand you make a rate of 15 cents north on sugar, Mr. Miller. Why is that made?

Commissioner PROUTY: He did not say he made a rate of 15 cents. He said there was a water rate of 15 cents, and he thought his was a little higher.

Mr. COTTON: Do you remember what your rate is on sugar to Portland?

Mr. MILLER: 15½ cents a hundred, as I recall.

Mr. COTTON: Why do you make that rate north?

Mr. MILLER: Because of the water rate.

Mr. COTTON: Where do you meet water competition on sugar?

Mr. MILLER: Well, we carry the north-bound business, traffic like that, at a very low rate, because it serves to load cars that we would otherwise bring empty.

Mr. COTTON: Do all the troubles connected with the operation of this line end when you get to the top of the mountain, or do they have difficulties farther south? That is, the top of the Siskiyou Mountain.

Mr. MILLER: There is another summit after we get to Siskiyou, and then down through the Sacramento Canyon is a very difficult piece of road to operate.

Mr. COTTON: Riding down in the day time, taking the
425 night train out of Portland, you get to Ashland in the morning, do you not?

Mr. MILLER: Yes sir; about noon.

Mr. COTTON: And you ride in the mountains about how long on a passenger train; about how many miles?

Mr. MILLER: You ride all day, certainly, down to Dunsmuir.

Mr. COTTON: Then when you get down to Dunsmuir, you strike what stream?

Mr. MILLER: The Sacramento River.

Mr. COTTON: The headwaters of it?

Mr. MILLER: Yes sir.

Mr. COTTON: And what is the character of the road down through the headwaters of the Sacramento?

Mr. MILLER: Well, up to Dunsmuir, as I say, it is a very bad piece of road, a difficult piece of road to operate.

Mr. COTTON: And from Dunsmuir south?

Mr. MILLER: From Dunsmuir south is a pretty good country. It is a fairly good road until you get a few miles south of Dunsmuir, down to Redding or Red Bluff.

426 Mr. COTTON: What is the character of the Sacramento River there in the vicinity of Dunsmuir?

Mr. MILLER: Well, that is a pretty wild stream, the headwaters of the Sacramento. It is a rough country.

Mr. COTTON: Subject to any difficulties in operation there?

Mr. MILLER: Well, I should imagine so. I am not so familiar with the actual operation there, but I should imagine it was a difficult piece of road to operate.

Commissioner PROUTY: Mr. Miller, going south from Ashland, where is the next divisional point?

Mr. MILLER: Dunsmuir.

Commissioner PROUTY: You operate the road between Ashland and Dunsmuir as one division?

Mr. MILLER: Yes sir.

Commissioner PROUTY: Would a solid freight train be hauled from Ashland to Dunsmuir, or would you alter the makeup of that train at some intermediate point?

Mr. MILLER: The train would have to be split because of the grades.

Commissioner PROUTY: That is to say, the train you take out of Ashland would not be hauled as a solid train all the way through to Dunsmuir?

427 Mr. MILLER: No; I think not.

Cross-examination:

Mr. TEAL: Mr. Miller, you testified that in 1900 and 1901 for nine months you were connected with the Southern Pacific directly in Oregon?

Mr. MILLER: Yes sir.

Mr. TEAL: And that since 1901 you are practically the traffic agent in Oregon of both lines, the O. R. & N. and the Southern Pacific?

Mr. MILLER: Yes sir.

Mr. TEAL: You also said that you were familiar with the business of the Southern Pacific Railway Company?

Mr. MILLER: Yes sir.

Mr. TEAL: I am speaking of Oregon.

Mr. MILLER: Yes sir.

Mr. TEAL: I would like to ask you, briefly, whether or not since 1899 the earnings of the Oregon and California Railroad in the state of Oregon have not very largely increased?

Mr. MILLER: I think they have.

428 Mr. TEAL: I will not ask you for the exact figures. I will ask you whether or not its road bed has not been improved?

Mr. MILLER: Yes sir, it has.

Mr. TEAL: New rails laid?

Mr. MILLER: Yes sir.

Mr. TEAL: That you use larger locomotives?

Mr. MILLER: Yes sir.

Mr. TEAL: That you have higher minimums in lumber, do you not?

Mr. MILLER: Yes; the minimum weights in that line have been increased.

Commissioner PROUTY: Did this new arrangement in minimums apply on the Southern Pacific?

Mr. MILLER: The arrangement as to minimum weights on lumber on the Southern Pacific are entirely different from the arrangement with respect to eastern business.

Mr. TEAL: As a matter of fact, the train loads have increased, have they not over the Southern Pacific?

Mr. MILLER: Yes sir.

Mr. TEAL: And the amount in the car and the load, is generally very much improved, is it not, over what it was in
429 1901?

Mr. MILLER: Yes sir.

Mr. TEAL: Very much heavier trains are run?

Mr. MILLER: Yes sir.

Mr. TEAL: I believe you testified that the movement of the empties has always been north bound?

Mr. MILLER: It has been since the period you mentioned.

Mr. TEAL: That is what I mean. In 1899, as I remember, this $3.10 rate was first put in?

Mr. MILLER: Yes sir.

Mr. TEAL: And in 1898, prior to April 25th, 1898, there had not been a rate, as I understand you to say, that you could remember out of the Willamette Valley for lumber, for interstate business?

Mr. MILLER: Yes; a memorandum I have does not show any rate prior to that time, and doubt very much if there was any.

Mr. TEAL: There was no movement, was there?

Mr. MILLER: There was no movement to California.

Mr. TEAL: And very little except local?

430 Mr. MILLER: 2100 cars moved south through Ashland in 1898.

Mr. TEAL: That was after the $4 rate was put in, about which Mr. Booth testified?

Mr. MILLER: That was destined largely to Utah and Nevada points.

Mr. TEAL: That is what Mr. Booth said.

Mr. MILLER: Yes.

Mr. TEAL: But that is when this lumber movement commenced.

Mr. MILLER: 1898; yes.

Mr. TEAL: Now, was Cow Creek Canyon operated then?

Mr. MILLER: Yes sir.

Mr. TEAL: And the Sacramento River ran down hill?

Mr. MILLER: Yes sir.

Mr. TEAL: And the Siskiyou Mountains were there just the same, were they not?

Mr. MILLER: Yes sir.

Mr. COTTON: We concede all of that, may it please the Commission. The physical conditions of the road have not changed.

Mr. TEAL: Mr. Miller, in connection with the Oregon & California Railroad——

431 Mr. COTTON: I want to have established very early the principle, and I would like to have Mr. Teal establish it, that because we ever make a low rate, we have got to stay with it always. I think that would be a useful principle to establish in Oregon.

Mr. TEAL: Don't get agitated. I was asking a few questions about the physical conditions.

Mr. COTTON: I concede all that. You can save time on that.

Mr. TEAL: There are one or two things I want to ask about the Oregon & California. You spoke about the operation of the Oregon & California Railroad through the Willamette Valley, Mr. Miller?

Mr. MILLER: Yes sir.

Mr. TEAL: Do you want the Commission to understand by what you said that that is a hard road to operate or an easy road to operate?

Mr. MILLER: I said we frequently had troubled there from water — water troubles, washouts.

Mr. TEAL: That road has been there over 35 years, has it not, operated in that valley? It is an old road, is it not?

Mr. MILLER: Yes; it has been there that long.

432 Mr. TEAL: The oldest road in Oregon?

Mr. MILLER: Part of the Southern Pacific lines in Oregon, of course, are the oldest roads in Oregon.

Mr. TEAL: Mr. Miller, I have not had time to examine your figures about the car movement south into the territory that it went into, but taking your figures as accurate, I did notice that from the valley in 1906, out of what you stated was 3407 carloads of commercial movement of lumber, 1494 did go into those San Francisco Bay points proper.

Mr. MILLER: San Francisco Bay points too, 1494 cars in 1906.

Mr. TEAL: And 391 more went to the other territory immediately adjacent?

Mr. MILLER: Yes sir.

Mr. TEAL: In other words, out of the car shipments, according to your statement, from the Willamette Valley, nearly 60 per cent. of it went right into this affected territory, regardless of the number in that neighborhood, did it not?

Mr. MILLER: Now, let us see.

433 Mr. TEAL: There were 1885 cars went into it, and you say 3,407 moved to California points?

Mr. MILLER: No; I think you have those figures confused. There were 1494 cars to San Francisco Bay points, and 391 to the adjacent territory that took $5 or lower.

Mr. TEAL: Yes.

Mr. MILLER: There were 1363 cars to other California points and 159 cars to Utah, Nevada and Arizona, and a movement of 6395 cars through Portland.

Mr. TEAL: I am speaking of the California points. That shows there were 1523 cars out of 3407 that went to Nevada and other points in California than those affected by this rate from the Willamette Valley points.

Mr. MILLER: Well, there were 1885 cars shipped in 1906 to the territory affected by the advance of April 17, 1907.

Mr. TEAL: Now, during the year 1906 was there not a very severe car shortage in the Willamette Valley?

Mr. MILLER: Yes, sir.

Mr. TEAL: And were you able to supply the demands of the shippers for the lumber that they desired to ship south?

Mr. MILLER: We were not.

434 Mr. TEAL: Did that not obtain all through 1907, this year?

Mr. MILLER: Well, it was true for the greater part of 1907; yes.

Mr. TEAL: In this movement here that you referred to, you did not put in Company material that was moved?

Mr. MILLER: No; this is commercial business.

Mr. TEAL: You spoke of business being done at Glendale and Cottage Grove and Dallas and such places as that. Taking places like Falls City in the Willamette Valley, there are five or six sawmills there, are there not?

Mr. MILLER: There are several saw mills.

Mr. TEAL: Does it do any other business than that which is the outgrowth of the lumber business, using that as an illustration?

Mr. MILLER: Well, they handle some passenger traffic and some little merchandise traffic from Dallas.

Mr. TEAL: It is all a result of the lumber mills there, is it not?

Mr. MILLER: I don't know whether it is altogether a result of that, because there has been a little town there at Falls City

435 for some time, but I think the most of the business is the result of the lumber industry.

Mr. TEAL: Taking points like Cottage Grove and places of that character, where you are doing this local business, have they not within your own knowledge been largely built up by the lumber business? Has it not been a very potent factor in building up your business otherwise in the Willamette Valley?

Mr. MILLER: I think it has been a very potent factor in connection with the development of the country and in connection with the development of the business.

Mr. TEAL: Prior to what is known as the merger, Mr. Miller, by which we mean—I guess we all know what it means—how did the lumber move from the Willamette Valley?

Mr. MILLER: It moved south through Ashland.

Mr. TEAL: And it moved east over the Southern Pacific, did it not?

Mr. MILLER: Yes, to certain territories.

Mr. TEAL: At that time, the Southern Pacific as then constituted had no rates north that would enable it to go that way at all, had they?

Mr. MILLER: No sir.

436 Mr. MILLER: They insisted upon getting this haul south, did they not?

Mr. MILLER: That is the way the business moves. It did not go through Portland.

Mr. TEAL: And could not move through Portland?

Mr. MILLER: Well, there were no through rates, via Portland.

Mr. TEAL: Can you tell me the distance from Eugene to Denver? Let me ask you this, whether at that time the freight rate to Denver was not 40 cents to Eugene. Don't you remember?

Mr. MILLER: Via Ashland it was; yes sir. I think so.

Commissioner COCKRELL: Via what route?

Mr. MILLER: Via the Southern Pacific, through Ashland.

Mr. TEAL: According to my figures, from Eugene to Sacramento is 518 miles. It then moves from Sacramento to Ogden, 697 miles; from Ogden to Denver, 779 miles; or 2.034 miles. Now, at that time the rates were put into effect volutarily for that distance of 40 cents.

437 I will ask you if that was not a lower rate per ton per mile than any rate affecting the lumber interests under this old tariff from the State of Oregon to the points in dispute.

Mr. MILLER: What is the distance you make it?

Mr. TEAL: 2,034 miles, 40 cents a hundred. I have a purpose in showing this. It is $3.90 per ton per mile, in round numoer-, is it not?

Commissioner PROUTY: Any of us can make the computation on a distance chart.

Mr. COTTON: Have you those distances there?

Mr. TEAL: You can correct the distances if they are not right.

Mr. COTTON: I wanted to know if you were taking them in a general way?

Mr. TEAL: No; I took them from the official Railway Guide.

Commissioner PROUTY: These figures are all subject to correction.

Mr. TEAL: I simply want to know if at that time that lumber coming out did not have to go up the Siskiyou?

Mr. MILLER: Yes, sir.

Mr. TEAL: And over the Sierra Nevadas?

438 Mr. MILLER: Yes sir.

Mr. TEAL: And taken to Ogden?

Mr. MILLER: Yes sir.

Mr. TEAL: And up on the Rio Grande Western?

Mr. MILLER: Yes sir.

Mr. TEAL: Then to the Denver & Rio Grande?

Mr. MILLER: Yes sir.

Mr. TEAL: Then 11000 feet over those mountains?

Mr. MILLER: 11,000 feet may be excessive, but of course there was a mountain haul.

Mr. TEAL: And then down into Denver?

Mr. MILLER: Yes sir.

Mr. TEAL: And the freight was considered desirable, and so desirable that they would not let it go north bound. Is not that true?

Mr. MILLER: Well, I don't know how the people at that time looked at the matter, but I don't see how they could have regarded any such rate as the reasonable rate.

Mr. TEAL: You know Mr. Markham, do you not?

Mr. MILLER: Very well, sir.

Mr. TEAL: Mr. Markham was considered, when he was

439 in the railroad business, one of the best railroad men we ever had in the west, was he not?

Mr. MILLER: Yes, indeed; he was a very good man.

Mr. TEAL: And he advanced rapidly until he got to the head of the Southern Pacific Company in California?

Mr. MILLER: He got to be General Manager of the Southern Pacific Company?

Mr. TEAL: He had charge of the business in Oregon for many years, did he not?

Mr. MILLER: He was there, I think, about three years.

Mr. TEAL: These rates were in effect when he was there, were they not?

Mr. MILLER: What rates?

Mr. TEAL: This $3.10 rate we are talking about.

Mr. MILLER: When he was there they were there; yes sir. In fact, he is the gentleman through whose influence the rate of $3.10 was made.

Mr. TEAL: The basis of it was the development of the country in getting these industries started? You have often heard
440 him say that in your discussions with him, have you not?

Mr. MILLER: Well, the rate was made for the purpose of developing that business in the Willamette Valley.

Mr. TEAL: And getting the lumber business established, was it not?

Mr. MILLER: And placing these mills, so far as it might be practicable for the road to do it, on an equality with the mills located on tidewater.

Mr. TEAL: Have you figured out the average rate per ton per mile that you receive on lumber shipped from the Willamette Valley to all points in California?

Mr. MILLER: No; but I have figured out the average rate per ton per mile from certain points in the Willamette Valley to San Francisco.

Mr. TEAL: That is already in evidence. Can you give us the average rate per ton per mile upon all the Oregon and California lumber business?

Mr. MILLER: No; I cannot.

Mr. TEAL: You did furnish that for the O. R. & N. Company?

Mr. MILLER: Yes; but I haven't it for the Oregon & Cali-
441 fornia.

Mr. TEAL: Now, on the $3.10 basis on this green lumber, do you know what the average from the west side points—the rate per ton per mile average is on the $3.10 basis?

Mr. MILLER: No, I do not. I have never figured it.

Mr. TEAL: Of course we can submit these things with the argument, because the tariffs are all in effect; but I will ask you if the very lowest rate that you have on the $3.10 basis does not get below 4.31 mills per ton per mile?

Mr. MILLER: I can't answer that, Mr. Teal, without making some figures.

Mr. TEAL: You do not know, then, and cannot say what your average rate per ton per mile is that you have been receiving on lumber hauled by the Oregon & California Railroad Company?

Mr. MILLER: No sir, I cannot.

Mr. TEAL: You cannot say what the average rate per ton per mile is that you receive on California business?

Mr. MILLER: I can't speak it out of my own mind; no.

442 Mr. TEAL: And you cannot give the average rate on the $3.10 basis to Bay points?

Mr. MILLER: Now, just what do you mean by that?

Mr. TEAL: In arriving at these conclusions, you must have done some figuring. I say, take an average point in the Willamette Valley that you would call an average. Can you tell the Commission the rate per ton per mile in the San Francisco Bay points?

Mr. MILLER: Yes sir.

Mr. TEAL: How much?

Mr. MILLER: Now, take some point that you would like to have me furnish the information for, and I will endeavor to figure it.

Mr. TEAL: Eugene. No; don't do it now. Of course you can figure it.

Mr. COTTON: He can put in a statement of it.

Mr. TEAL: Of course he can put in a statement. So can I. I am trying to ascertain on what basis these rates were changed when he arrived at the conclusion of the basis of this rate. If he knows nothing about it, that is all I want.

Mr. MILLER: Substantially a half a cent a ton a mile.

443 Commissioner PROUTY: Which rate, the old or the new one?

Mr. MILLER: On the basis of $3.10.

Mr. TEAL: Speaking of these ferries and one thing and another, that you have to cross in getting into San Francisco Bay, is there any insuperable objection to coming around by Niles, and not crossing those ferries at all?

Mr. MILLER: It can be done.

Mr. TEAL: Does not a great deal of freight move that way?

Mr. MILLER: I don't know, Mr. Teal: I expect it does, and a cut-off is now being built to avoid that ferry transfer.

Mr. TEAL: You also said you had to ferry all the Vallejo business. You did not mean that, did you?

Mr. MILLER: No.

Mr. TEAL: Then if you did make that statement you want to correct that?

Mr. MILLER: For Vallejo, yes, there may be a car ferry from the north.

444 Mr. TEAL: But how can there be a car ferry in Vallejo. It is on the north side of the strait.

Mr. MILLER: If it is on the north side, there is no transfer.

Mr. TEAL: So that if the movement was down past Benicia and carried across that way, and if it did not stop at Oakland, and went across the Bay, then there would be two ferries?

Mr. MILLER: Yes sir.

Mr. TEAL: But that is not necessary to get into San Francisco at all, or into Oakland, is it?

Mr. MILLER: Not absolutely necessary. The service can be performed to San Francisco without the Oakland transfer, by a very much longer haul.

Mr. TEAL: Mr. Miller, last year, all through 1906, after that fire which we have to refer to so often, and up to 1907, there was an extreme congestion of freight in and around San Francisco Bay points, was there not?

Mr. MILLER: Yes sir.

Mr. TEAL: And at one time there were 8,000 cars there piled up, were there not, Mr. Miller?

Mr. MILLER: Substantially that.

445 Mr. TEAL: That was the result of the tremendous inflow of merchandise and everything that was needed there for a destroyed city, was it not?

Mr. MILLER: Yes sir.

Mr. TEAL: That condition does not prevail to-day, does it?

Mr. MILLER: No.

Mr. TEAL: At that time it was exceedingly difficult for you to get cars at all up north, was it not?

Mr. MILLER: Yes sir.

Mr. TEAL: You had all kinds of trouble trying to serve your people?

Mr. MILLER: Yes sir.

Mr. TEAL: And it was while these conditions were in effect that I speak of, that this first notice was sent out, changing this rate, was it not?

Mr. MILLER: The notice was given last winter, sometime.

Mr. TEAL: I say those conditions still existed in San Francisco, then, did they not?

Mr. MILLER: Yes; there was——

Mr. TEAL: Of course not to the same degree. I don't

446 mean that.

Mr. MILLER: There was a bad condition of affairs in San Francisco all last year?

Mr. TEAL: And it is getting straightened out now. The matter of the $3.10 rate was taken up by the State Railway Commission, was it not, Mr. Miller?

Mr. MILLER: Yes sir.

Mr. TEAL: And you appeared there, did you not?

Mr. MILLER: Yes sir.

Mr. TEAL: They recommended that the rate be restored, did they not?

Mr. MILLER: They made a suggestion, I believe, that the rate not only be restored but applied to Portland and all points of the Southern Pacific Company's lines in Oregon.

Mr. TEAL: They went over the subject there at that time in that investigation?

Mr. MILLER: Yes sir.

Mr. TEAL: In connection with that empty movement—I don't want to take much time with it, but can you give any idea of how many empties you have to move to your own mills northbound?

447 Mr. MILLER: No sir.

Mr. TEAL: But you moved no freight into those mills. That was just simply to take the lumber out, was it not?

Mr. MILLER: Yes; I don't think there was any merchandise moved into the points where these mills are operated; certainly not from the south, of any consequence.

Mr. TEAL: That is what I mean. The Southern Pacific Company are not running stores in there, are they?

Mr. MILLER: No.

Mr. TEAL: So that was a pure empty car movement from the south to these mills operated by the Company, for the purpose of loading their lumber and taking it south again?

Mr. MILLER: Yes sir.

Mr. TEAL: Now, in connection with the car movement last year and this year, were there any instructions issued by the Oregon & California road, so that no box cars were allowed to go south of Ashland?

Mr. MILLER: No sir.

448 Mr. TEAL: If they did go south of Ashland, what did they pay? Let us put in that way.

Mr. MILLER: There was an order issued——

Mr. COTTON: What was that question? I don't know what you mean by what they paid.

Mr. TEAL: What they paid locally.

Commissioner PROUTY: Let Mr. Miller answer the question.

The question was read as follows:

"If they did go south of Ashland, what did they pay? Let us put in that way."

449 Mr. MILLER: They paid the tariffs.

Mr. TEAL: What do you mean by the tariff?

Mr. MILLER: The rate published.

Mr. TEAL: Do you mean the local?

Mr. MILLER: Yes; whatever may be the published rate. It is the only rate we have.

Mr. TEAL: In other words, would a car go to Ashland on a local and then move south on a local, if it was a box car?

Mr. MILLER: It would all depend on where the traffic was going. If it was a through rate, of course it would take the through rate.

Commissioner PROUTY: If you loaded a car north of Ashland with lumber and sent it south with lumber, it would take the $3.10 rate going to San Francisco?

Mr. MILLER: Yes sir.

Mr. TEAL: Would you allow box cars to be loaded the greater part of last year that way?

Mr. MILLER: For a part of the time our own system cars were not permitted to go south of Ashland, were not permitted to get off the road. That was necessary, to take care of the local traffic,

450 under the demurrage laws as they existed in that state.

Mr. TEAL: That was the answer I wanted to get. I was not criticising you. I simply stated——

Mr. MILLER: Your question put to me was all box cars.

Commissioner PROUTY: Let us not spend time with that now, Mr. Miller. We know the fact that Mr. Teal wants.

Mr. TEAL: Now, on material that was sold by mills in southern Oregon, Mr. Miller. I mean in the Willamette Valley last year. Where ties were sold to the Western Pacific Railroad, loaded on cars of your system, would you allow those cars to go south of Ashland?

Mr. MILLER: Yes; we did not distinguish between any class of traffic, or traffic for any particular parties.

Mr. TEAL: You say that is a fact?

Mr. MILLER: Yes, sir.

Mr. TEAL: And you say then that nothing of that kind happened, where the cars were loaded for the western Pacific, inspected by the inspector, and when he ascertained they were for the Western Pacific, would not allow them to go through Ashland, and they had
451 to be diverted to the Southern Pacific in order to get through. You say no such thing as that occurred?

Mr. MILLER: I know nothing about any such condition of affairs. I never heard of it before.

Mr. COTTON: Is that at all material, if it existed?

Mr. TEAL: I think it is material.

Mr. COTTON: That might be a discrimination against the Western Pacific, but——

Mr. TEAL: It would be a pretty serious discrimination against the mill men too, I should think.

Mr. COTTON: You have not charged discrimination. I do not want to try here all the collateral questions that may come up, even by insinuation.

Mr. TEAL: Mr. Miller, you stated you have discussed this rate often with the shippers?

Mr. MILLER: Yes, sir; we have talked about it on numerous occasions.

Mr. TEAL: At the time this rate was taken out in the Willamette Valley, was it taken out at the request of anyone or for any other reason than what you have stated?

Mr. MILLER: You are referring now to the advance made from Portland on August 20th, 1903?

452 Mr. TEAL: No, sir; I am referring to the change that was made by the advance in rates in the last tariff.

Mr. DILLARD: In January 1904.

Mr. MILLER: From the Willamette Valley?

Commissioner PROUTY: No; April 18th, 1907.

Mr. TEAL: The question I asked you is this. Was that change made as a result solely of your conclusions that you desired a higher rate there, or was it changed at the request of anyone whose interests were affected by that rate?

Mr. MILLER: It was changed because the rate was too low.

Mr. TEAL: And in talking with these different people that you spoke to, did you ever talk to anybody or in discussing it was it ever suggested to you as a reason for taking it out that the rates as they then existed placed certain people at a disadvantage?

Mr. MILLER: That was suggested to me on many many occasions.

Commissioner PROUTY: What people?

Mr. MILLER: The Portland mill people claimed that a lower rate from points south of Portland was very much against their
453 interests and was unfair to them.

Commissioner PROUTY: That is what they claim here, is it not?

Mr. COTTON: Yes; that is what they claim here.

Mr. TEAL: What I want to know is whether that rate was taken out because of that request or not.

Mr. MILLER: No, sir; that rate was taken out because it was too low. We don't change our rates altogether upon request.

Mr. TEAL: Now Mr. Miller I would like to ask you if you receive or if your road receives any compensatory advantages of any kind by reason of making rates on products such as lumber that can move under it, even though you may think it is a low rate?

Mr. MILLER: Yes, sir.

Mr. TEAL: And that in your opinion justifies those rates does it not?

Mr. MILLER: Justifies what rates, Mr. Teal?

Mr. TEAL: Well, justifies very often a lower rate than you consider compensatory on account of the other business you get.

Mr. MILLER: Yes indeed.

Mr. TEAL: You were speaking about the blanket rates and
454 the rates from the Willamette Valley; I mean northbound. I would like to ask you whether or not in your opinion if that rate did not exist the same as the Portland rates to eastern points, the lumber could move from the Willamette Valley?

Mr. MILLER: Well, it has always been represented to us that the mills south of Portland could not stand a higher rate to the east than applied from Portland.

Mr. TEAL: But I mean your judgment about it.

Mr. MILLER: My judgment is based entirely upon the information that I have received from the shippers in the Willamette Valley.

Mr. TEAL: What is your judgment?

Mr. MILLER: My judgment is that they cannot pay a higher rate than obtains from Portland into the territory east of—well, to any territory.

Commissioner PROUTY: How do you, as a traffic man, justify the same rate from these Willamette Valley points east via Portland, while you make a higher rate from Portland to San Francisco?

Mr. MILLER: One of the reasons is that prior to the time the rate was established via Portland to the east, the rates were already established via Ashland south.

455 Commissioner PROUTY: So the Portland rate simply took the place of the previous rate?

Mr. MILLER: Yes, sir; except to the territory east of the Missouri River, which was added when the rates were established via Portland.

Commissioner PROUTY: And you divert the traffic by the Portland gate-way now because you can handle it cheaper that way?

Mr. MILLER: Yes sir. Another reason is that the business would not stand the higher rate from the Willamette Valley and Portland, and consequently we would not apply it from that territory.

Commissioner PROUTY: The Portland business, you think is not dependent on the rail rate to San Francisco in the same way that the Willamette Valley business is?

Mr. MILLER: No.

Commissioner PROUTY: And that is to your mind one reason

which might justify taking the rate out at Portland, although it would apply in the Willamette Valley?

Mr. MILLER: Yes, sir.

Mr. TEAL: Mr. Miller, there are just one or two more things I want to ask you about. You have very large oil tanks at
456 Ashland, have you not?

Mr. MILLER: Yes, sir.

Mr. TEAL: That moves by rail, does it?

Mr. MILLER: That oil moves by rail.

Mr. TEAL: Then you have another large oil tank at Roseburg?

Mr. MILLER: Yes, sir.

Mr. TEAL: That goes by rail?

Mr. MILLER: Yes, sir.

Mr. TEAL: It moves pretty well down to the junction, don't you think?

Mr. MILLER: I don't know just how they divide that. Some oil moves south from Portland and some north from San Francisco.

Mr. TEAL: But there is a considerable amount that moves by rail, surely, to the points I have mentioned.

Mr. MILLER: Yes; it all moves by rail to the points you have mentioned, some from Portland and some from San Francisco.

457 Mr. TEAL: Mr. Miller, can you give a statement of the amount of business and the number of trains operated on the Wendling Branch since this cut-off has been put in?

Mr. MILLER: Yes; I think that could be furnished.

Mr. TEAL: I would like to have you do that, if you will—the number of freight trains and the number of passenger trains, and the freight that originates on that branch and ends on that branch.

Mr. MILLER: It depends on how far back the records go, Mr. Teal.

Mr. BOOTH: To show what revenue was derived by that branch on freight other than lumber, is what he wants.

Mr. MILLER: We would not be able to show the revenue of the branch. We could show the tonnage.

Mr. TEAL: The tonnage is all I care for. Mr. Cotton, you asked me yesterday to give you the pages of the report of the Board of Commissioners of Oregon on assessment and taxation, to which I referred, and which was introduced in evidence yesterday. They are pages 270 to 277, inclusive. They are simply tabulated
458 statements. This report is dated June 30, 1906. I shall not encumber the record, Mr. Commissioner, with the whole report. I will just cut out those pages and send them on, because there are only a few of them.

Redirect examination:

Mr. COTTON: Mr. Miller, you do not make a $3.10 rate on rough green stuff from Portland, and you have not, have you, for a long time past?

Mr. MILLER: No; we have not, for the last three or four years.

Mr. COTTON: Why not?

Mr. MILLER: The rate is too low and unprofitable. The business is undesirable on that basis.

Mr. COTTON: Could it move in some other way?
Mr. MILLER: It could move by water.
Mr. TEAL: I did not catch the first question.
Mr. COTTON: I thought that was one of the questions you asked.
Commissioner PROUTY: I asked him how he justified taking out the $3.10 rate to Portland and giving it into the Willamette Valley.

459 Mr. COTTON: You put in the $3.10 rate because the stuff could move from Portland?
Mr. MILLER: Yes sir.
Mr. COTTON: Please state whether or not the rates from Portland and the Willamette Valley on lumber to San Francisco were made on a commercial basis with the idea of acquiring revenue out of the rates themselves, or what was the reason why they were made?
Mr. MILLER: Well, they were made for the purpose of developing and encouraging that industry in the Willamette Valley, tributary to the lines of the Southern Pacific Company. There was no money in the business at $3.10 per ton, directly—no profit in the rate.
Commissioner PROUTY: Was it your idea, Mr. Miller, that the industry can get along without that rate? Is that the theory on which you withdrew it, that it was an infant industry in 1899, and has become old enough to go alone now?
Mr. MILLER: Yes sir.
Commissioner PROUTY: You think this rate is not necessary to that industry at the present time?
Mr. MILLER: No sir.

460 Commissioner PROUTY: If it were, would you keep it in? Suppose the Commission is of the opinion that it is, ought the Commission to keep it in?
Mr. MILLER: Of course that is a difficult question to answer, not having all of the circumstances and conditions surrounding the business before us. I couldn't answer that question until I knew just what the conditions might be, not only with respect to the lumber traffic itself but with respect to the general conditions existing in that territory.
Mr. COTTON: You do not intend to reduce the lumber business in the Willamette Valley to nothing and prostrate it? You have no idea of destroying it, have you?
Mr. MILLER: Why, decidedly not.
Mr. COTTON: You do regard the present lumber rate, though, that is the $3.10 rate, as an unreasonably low rate?
Mr. MILLER: Yes sir.
Mr. COTTON: You think it can stand a higher rate?
Mr. MILLER: Yes sir.
Mr. COTTON: And do you regard $5 as a high rate for the services performed?

461 Mr. MILLER: I regard $5 as a low rate for that service, under the circumstances and conditions.
Mr. COTTON: Is that a low rate as compared with other rates, which you are charging on traffic from which you are making your revenue in that territory?

Mr. MILLER: It is very much lower.

Mr. DILLARD: Mr. Commissioner Prouty asked you if you thought the Commission should keep in the rate of $3.10 if in their judgment they believed it was necessary to the sustaining of the industries. The only question I have is this. Is it not true that the conditions surrounding the operation of that Oregon & California Railway, the river competition at certain places, water competition at other places, and the various conditions are such that it is a road that will have to be handled more specially than almost any other in the fixing of rates by the traffic officers in charge of it?

Mr. MILLER: Yes; I think so. The conditions surrounding the movement of the traffic in that territory are peculiar to themselves, and it is necessary to take into consideration many, many circumstances in determining what rates ought to be or what they
462 might be.

Mr. DILLARD: Has it not been the endeavor, and will it not be, of the traffic officers to derive only a just and proper revenue, and at the same time, so far as can be done, to foster and sustain the industry and keep established reasonable and just rates?

Mr. MILLER: Yes sir; that is the basis upon which we work.

Recross-examination:

Mr. TEAL: Mr. Miller, it is just that difference of opinion, that you made a mistake, that has brought about this proceeding, is it not, and that the experiment will not work in this case? That is our feeling, is it not?

Mr. MILLER: I don't know just what your feeling is, Mr. Teal. I know what your complaint is.

Commissioner PROUTY: Mr. Teal, it is a very important situation in this case as to how far the Southern Pacific may consult its own judgment in these matters and as to how far that judgment can be controlled by the Commission. That is a thing for you gentlemen to argue.

Mr. TEAL: Yes sir; I will argue that at the right time. I
463 think so far as the power is concerned, the Supreme Court of the United States has settled the power of the Commission upon anything of this kind.

Mr. COTTON: We are not quarreling with the power.

Mr. TEAL: It is just a question as to whether—but that is all a matter of argument anyway hereafter. The only thing I have to say is this, your Honor. We have not gone into the question of profits of these gentlemen at all, except as the evidence scintillates throughout the entire case; and to that end I want the privilege of referring to the testimony in the other cases for the purpose of showing what their profit has been.

Commissioner PROUTY: We said you might do that.

Mr. COTTON: That is an important question.

Commissioner PROUTY: Have you any further questions?

Mr. COTTON: No sir; not from Mr. Miller. We would like to put in the local California tariffs too, so as to show the general rate adjustment.

Commissioner PROUTY: Have you any other witness?

Mr. COTTON: No sir.

464 Commissioner PROUTY: Have you any witness you desire to call in rebuttal, Mr. Teal?

Mr. TEAL: No; I would like to have permission to file with the Commission in this case a statement of the profits of the Booth-Kelly Lumber Company since they commenced operations, if that will be of any service.

Commissioner PROUTY: As I said yesterday, Mr. Teal, these two cases have been heard together. You gentlemen are counsel in both cases, and it seems to me you ought to have a right to refer in this case to anything that was developed in the other case.

Mr. TEAL: I did not know it went back that far,

Commissioner PROUTY: I do not see any reason why you should not have that right.

Mr. TEAL: I think it is important, because I think some of these gentlemen are mistaken on some ideas they have, and I want to refer to those matters.

Mr. COTTON: As far as they are in evidence.

Commissioner PROUTY: I think you may have a right to refer, in the argument of this case, to any matter of record in the other case.

465 Mr. TEAL: I ask permission to do this, and I think it is important. I would like to file here, if there is no objection to it, a verified statement of the actual profits of the Booth-Kelly Lumber Company since they started in business in the Willamette Valley

Mr. COTTON: Then I would like to examine Mr. Miles and some of these other gentlemen. That is, if you are going into the question of profits, I want to open up the whole thing.

Commissioner PROUTY: I hardly think we will go into that question.

Mr. COTTON: I do not want to take the profits of one isolated firm.

Mr. TEAL: Very well then; I have no other evidence to introduce.

Commissioner PROUTY: I suppose you desire to argue this case at the same time the other case is argued here?

Mr. TEAL: Yes; but I would like to have a little more time on that brief.

Commissioner PROUTY: We cannot give you more time on that brief if the case is to be argued at that time. The case will stand for argument on the 4th of March. With that understand-

466 ing, we will take the case under consideration.

The Commission, at 12.40 o'clock p. m., adjourned.

467 EXHIBIT C.

Memorandum Showing Proportion of Through Rates Accruing to Southern Pacific Oregon Lines on Traffic Interchanged with Connecting Lines at Portland, Ore.

All Freight Except Products of the Forest.

Between	and	Southern Pacific Proportion.
All stations on Southern Pacific Oregon Lines.	Points on Oregon Short Line, Union Pacific R. R., Denver & Rio Grande R. R., Colorado Midland Ry. East of Huntington, Ore., to Colorado Common Points including Colo. Com. Points on the Colorado & So. Ry. and Atchison, Topeka & Santa Fe Ry.	Where through rates are established 46½ per cent. subject to local rate as maximum.
Via O. R. & N. through Huntington, Oregon.		
Do.	All Points East of Colorado Common Points.	Where through rates are established 40 per cent. of through rate or proportion of through rate accruing west of Missouri River or west of Union Pacific or Chicago, Rock Island & Pacific Ry. Junction Points of delivery to connecting lines—subject to local rates as maximum.
Via O. R. & N. through Huntington, Oregon.		
All points on Main Line Southern Pacific Oregon Lines North of Ashland, Ore.	Points on Northern Pacific Ry., known as Montana Common Points.	45½ per cent. of through rates subject to the local rates as maximum.
	Points on Northern Pacific Ry. east of Helena, Mont., to and including Billings, Mont.	35 per cent of through rate subject to local rate as maximum.
	Points on Northern Pacific Ry. east of Billings, Mont., to and including Nor. Pac. Ry. Eastern Terminals.	30 per cent. of through rate subject to local rate as maximum.
Via Portland and Northern Pacific Ry.		

468 *Memorandum Showing Proportion of Through Rates Accruing to Southern Pacific Oregon Lines on Lumber, Shingles, and Products of the Forest, Taking Same Rates, Interchanged with O. R. & N. Co. at Portland and East Portland, Oregon.*

When destined	From	Southern Pacific Proportion.
	All stations on Southern Pacific Oregon Lines except Yamhill Division and Mohawk-Wendling Branch.	25 per cent. of through rate or proportion of through rate accruing west of Missouri River Common Points or West of Union Pacific junction points of delivery to connecting lines but not to exceed 10 cents per 100 lbs. except where local rate is less same will govern. (See note.)

	Points on Southern Pacific Yamhill Division.	Arbitrary 7½ cents per 100 lbs.
All points on Oregon Short Line R. R., Union Pacific, also all points on D. & R. G. R. R., and Colo. Midland Ry., except points south of Pueblo, Colo., all Colorado Common Points on Colorado and So. Ry. and A. T. & S. F. Ry.; and all points east of Colorado Common Points to which through rates are established.	Points on Southern Pacific Mohawk-Wendling Branch.	Through rate is based on arbitrary of 1½ cents per 100 lbs. over rate from Springfield, Oregon, So. Pac. Co. receives this arbitrary plus 25 per cent. of through rate or proportion of through rate accruing west of Missouri River Common Points or west of Union Pacific Junction Points of Delivery to connecting lines, but not to exceed 11½ cents per 100 lbs. (See note.)
	All points on Corvallis & Eastern Ry. East of Albany to Mill City inc.	Arbitrary of 3 cents for C. & E. Ry. is first deducted and So. Pac. Co. receives 25 per cent. of remainder of through rate or proportion of through rate accruing west of Missouri River Common Points or west of Union Pacific Junction Points of Delivery to connecting lines, but not to exceed local rate of 9 cents per 100 lbs. (See note.)
	All points on Corvallis and Eastern Ry. east of Mill City, Ore.	Through rate is based on arbitrary of 1½ cents per 100 lbs over rates from Mill City and C. & E. receives this arbitrary in addition to Mill City revenue, So. Pac. receives same earnings as on traffic originating at Mill City.

NOTE.—On shipments destined to Branch Line points or Denver and Rio Grande R. R. west of Grand Junction, Colorado, the Southern Pacific Co. is restricted to its proportion of the Main line rate.

469 *Divisions on Traffic Interchanged with Pacific System Crossing Oregon-California State Line.*

Mileage pro rate, allowing O. & C. R. R. constructive mileage of 25% *i. e.*, on a joint haul of say 300 miles, of which 100 miles was performed by O. & C. R. R., the O. & C. R. R. would receive 125/325 of the through rate.

In addition to above the O. & C. R. R. receives an arbitrary of 40 cents per ton on all freight crossing both the Oregon-California State Line, and Willamette River Bridge at Portland.

470 STATE OF ILLINOIS,
County of Cook, ss:

I, W. B. Scott, being duly sworn on my oath, do say that I am the Assistant Director of Maintenance & Operation for the Southern Pacific Company, and for that part of the lines of said Company extending from Portland to San Francisco, being the Oregon & California Railway, from the Oregon and California State line to Portland, and a part of the Southern Pacific, Pacific System, from the Oregon and California line to San Francisco.

The blue prints hereto attached have been made in my office, and under my direction. They show the profile of the road from Portland to Sacramento. There is little or no grade between Sacramento and San Francisco, and no profile has been made for this part of the road.

Attached to blue print is a statement marked "Exhibit 'A'," showing the mileage of grades from Portland to San Francisco, the adverse grade and the summit elevation. The maximum grades, in feet per mile, are shown in the blueprint on the grade line. The total rise in grades from Portland to San Francisco and San Francisco to Portland, is indicated in the statement attached to blueprint by showing the number of miles from level to one half per cent., from one half per cent. to one per cent., and thus by half per cents to the greatest maximum of three and three tenths per cent.

What is meant by adverse grade is this: If there were no downgrades from San Francisco to Portland, and the upgrades were all continuous, the total rise would be 10,707 feet. So if there were no downgrades from Portland to San Francisco and all the upgrades were made continuous, the total rise would be 10,684 feet.

As a matter of fact the line passes over the Siskiyou Mountains which rise very abruptly to a height of 4124.8 feet. Referring to the blueprint and the peak marked "Siskiyou" I would state that in going about fifteen miles over the peak you rise 2388.6 feet. At this point the most powerful engine on the S. P. line, an en-
471 gine of four drivers, and weighing 1715 tons, can only handle 345 gross tons. Ordinarily this includes seven cars and their freight, but under heavy loading, will be only five cars.

Between Grants Pass and West Fork, a distance of 47 miles, there are ordinarily kept five helper engines; between Roseburg and Divide, four helper engines; between Dunsmuir and Ashland, ten helper engines, and between Ashland and Hornbrook two additional helper engines are required. As shown by the exhibit, between Grants Pass and West Fork, a distance of 47 miles, an engine of the type named can handle 560 gross tons; between Roseburg and Divide, 49 miles, 700 gross tons; between Dunsmuir and Ashland, 107 miles, 500 gross tons, and between Ashland and Hornbrook, 36 miles, 345 gross tons.

Helper engines have to be used on 203 miles of the road between Portland and San Francisco. A word of explanation is here necessary as to the statement which would show 239 miles on which a helper engine is used, but on the 36 miles between Ashland and Hornbrook two helper engines have to be used; that is, it takes three engines to handle the train. The helper engines are used downgrade as well as upgrade for the reason that it is necessary to get helper engines to the bottom of the grade in order to help the next train in the opposite direction.

(Signed) W. B. SCOTT.

Sworn to and subscribed before me, the undersigned, a Notary Public, in and for the State of Illinois, County of Cook, by the said W. B. Scott, this First day of February, 1908. Witness my hand and seal of office.

[SEAL.] (Signed) WILLIAM A. RAWSON.

SOUTHERN PACIFIC CO.

CONDENSED PROFILE

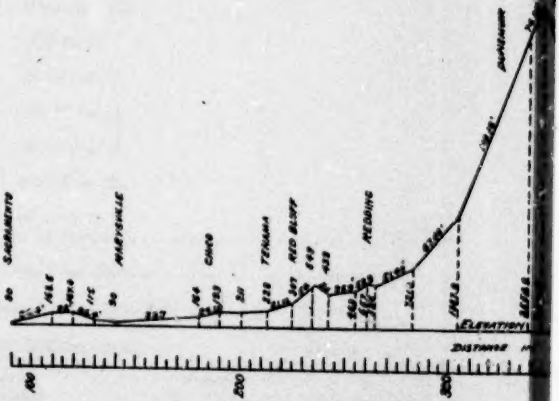
SACRAMENTO CAL. TO PORTLAND ORE.

HOR. SCALE 1" = 40 MILES.

VERT. " 1" = 1000 FEET.

OFFICE OF CONSULTING ENGINEER. CHICAGO DEC. 10, 1907.

NOTE – FIGURES ON GRADE LINE INDICATE MAXIMUM RISE IN FEET PER MILE.



THERN PACIFIC CO.

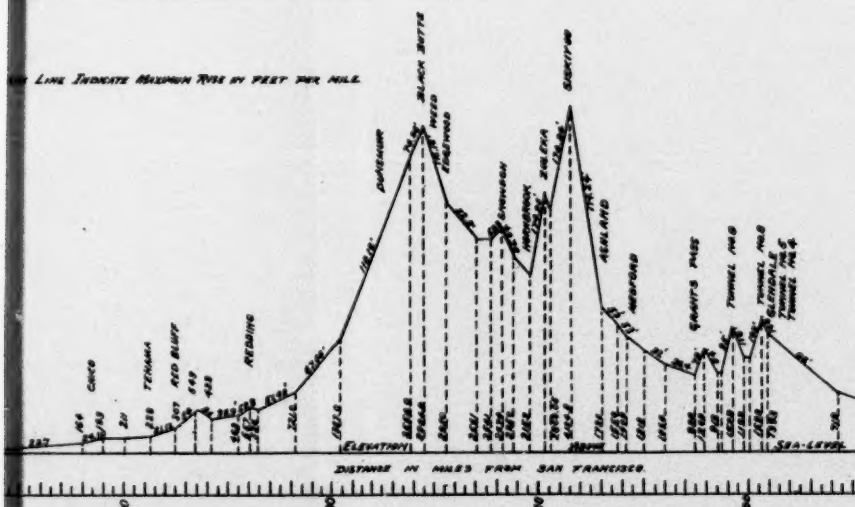
ISED PROFILE

TO CAL. TO PORTLAND ORE.

SCALE 1" = 40 MILES.

" 1" = 1000 FEET.

ILTING ENGINEER. CHICAGO DEC. 19, 1907.



C.E.
572

No 592
Southern Pacific Co
v.
Interstate Com. Com'n
} p. 473

MILEAGE OF GRADES

Jan. 28, 1908.

SAN FRANCISCO TO PORTLAND

146.97 miles level
252.94 " level to 1/2%
80.51 " 1/2% to 1%
41.06 " 1% to 1-1/2%
18.69 " 1-1/2% to 2%
8.51 " 2% to 2-1/2%
5.41 " 2-1/2% to 3%
6.11 " 3% to 3.3%

PORTLAND TO SAN FRANCISCO

146.97 miles level
100.31 " level to 1/2%
40.41 " 1/2% to 1%
16.83 " 1% to 1-1/2%
21.75 " 1-1/2% to 2%
6.40 " 2% to 2-1/2%
4.43 " 2-1/2% to 3%
5.39 " 3% to 3.3%

Total adverse grades San Francisco to Portland.....10,707 ft. rise.

Total adverse grades Portland to San Francisco.....10,884 ft. rise.

Summit elevation between San Francisco and Portland..... 4,135 ft.

	Consolidation Helper Engines used:	Rating.
5	Between Grants Pass and West Fork;	47 miles, 580 tons, 11 loaded cars
4	" Roseburg and Divide;	49 miles, 700 tons, 14 loaded "
10	" Dunsmuir and Ashland;	107 miles, 900 tons, 20 loaded "
2	" Ashland and Hornbrook;	26 miles, 345 tons, 7 loaded "

(Also Location Blue Print Maps p. 473)

EXHIBIT -G-

RATES ON LUMBER FROM SOUTHERN PACIFIC POINTS

TO	From	Date Effective	Via So.Pac.Co. Shasta Line	Rates in effect via OR&NCo. from Portland Ore.,Huntington Route at time rate via Shas was established.
	PORTLAND,ORE.	2/25/1897	# 40	37-1/2
		#Calcelled May 15, 1901.		
Utah Com. Points	Main Line pts. On So.Pac.East Side Division	2/25/1897	$ 40	-----
	Branch Line Pts, On So.Pac.East Side Division	2/25/1897	$ 40	------
	West Side & Yamhill Div.	3/20/1899	$ 40	-----
		$ Calcelled October 20, 1902		
	Portland, Ore.	7/3/1894	& 40	40
Colo. Com.Pts.	Main Line Pts on So.Pac.East Side Div.	7/3/1894	& 40	-----
	Branch Line Points on So.Pac. East Side Div.	8/15/1900	& 40	-----
	West Side & Yamhill Div.	8/15/1900	& 40	-----
		& Calcelled December 27, 1902.		
	PORTLAND, Ore.	7/15/1901	#$ 50	50
Pts.on U.P.in Neb.& Kan.	Main & Branch Line Pts.East & West Side Divisions	7/15/1901	#$ 50	-----
		#$ Cancelled September 26, 1901		
	PORTLAND,Ore.	7/15/1901	$& 50	50
Chicago, Ill.	Main & Branch Line Pts.East & West Side Divisions	7/15/1901	$& 50	-------
			$& Cancelled July 25, 1901 In effect 10 days only.	

Rates via Portland and O R & N Co. established August 24th, 1901.

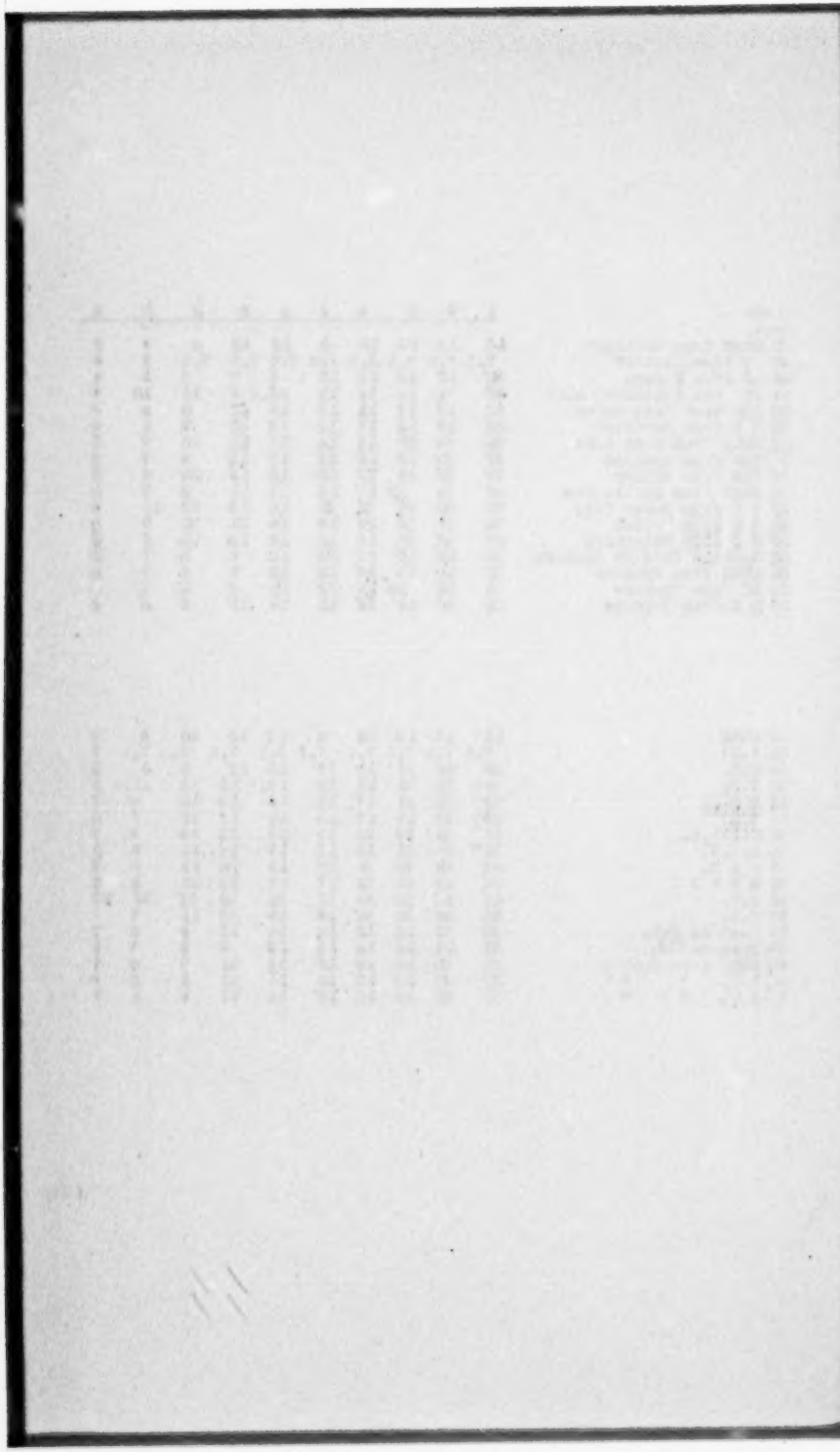
CLASS RATES-----LOCAL TARIFFS.

Distance		1	2	3	4	5	A	B	C	D	E
10	OR&N From Portland	10	9	8	7	7	7	6	4	4	3
10	GN East Fm Seattle	7.5	7.5	7	6	6	5	5	4	4	3
8	NP East Fm Tacoma	14	12	10	8	7	6	5	4	4	3
10	CP Vancouver East	15	13	10	8	7	6.5	6	7	5	5
9	OSL West fm Ogden	10	9	7	6	6	6	5	5	4	3
10	SP South fm Portland	15	13	11	9	8	8	8	6	4	4
11	SPLA from Salt Lake	15	13	11	9	8	8	6	5	4	4
16	SP&N from Spokane	15	13	11	9	8	8	7	5	4	3
6	C&E from Albany	16	14	11	10	8	9	7	7	4	4
11	BBBC Bellingham Wn.	18	16	13	11	9	9	7	5	5	4
10	SPCAW from Dallas Ore.	16	14	11	10	8	9	7	7	4	4
10	SV from Baker City	16	15	14	13	12	11	10	9	8	7
10	GS from Dalles	10	10	10	10	8	8	6	5	5	5
16	KRV from Medford	14	13	12	11	10	2	2	2	1-3/4	1-3/4
10	Pac&Eastern fm Woodburn	16	14	11	10	9	9	7	7	4	4
10	O&SEfm Cottage Grove,	20	20	20	20	12.5	12/5	12.5	12.5	12.5	12.5
10	Spokane Inld Spokane,	14	12	11	10	10	8	7	5	5	4
10	Mt HoodRy fm Hood River	15	14	13	12	11	11	10	10	9	8
10	OR&N fm Spokane	10	9	8	7	5	5	5	4	4	3
9	NP fm Spokane	10	9	8	7	5	5	5	4	4	3
9	GN from Spokane	10	9	8	7	5	5	5	4	4	3

18	OR&N fm Portland	15	13	12	10	8	10	8	5	5	4
17	GN from Seattle	7.5	7.5	7.5	7.5	7.5	7.5	7.5	7	5	4
18	NP from Tacoma	20	17	14	12	10	8	6	5	4	4
17	CP Vancouver East	21	18	14	11	10	8.5	8	9	8	6
17	OSL West from Ogden	17	15	14	12	10	10	8	7	5	4
20	SP South from Portland	19	15	12	9	8	8	8	6	5	5
17	SPLA from Salt Lake	20	17	14	12	10	10	8	7	5	5
20	SP&N from Spokane	18	15	13	11	9	10	8	6	5	4
17	C&E from Albany	22	19	16	14	12	12	10	8	5	5
20	BBC from Bellingham	20	18	15	13	11	10	9	7	6	4
20	S V From Baker City	28	25	22	20	19	17	13	11	10	9
20	GS from Dalles	16	15	13	12	11	10	9	8	7	6
20	P E from Medford	22	19	16	14	12	12	10	8	5	5
20	O&SE from Cottage Grove	25	25	25	25	15	15	15	15	15	15
19	Spokane Inld fm Spokane	14	12	11	10	10	8	7	5	5	4
[illegible]	OR&N fm Spokane	14	12	11	10	10	8	7	5	5	4
[illegible]	NP from Spokane	14	12	11	10	10	8	7	5	5	4
22	GN from Spokane	14	12	11	10	10	8	7	5	5	4

ist-nce.		1	2	3	4	5	A	B	C	D	E
9	ORAM from Portland	15	13	12	10	8	10	10	8	7	6
29	V from Seattle	7.5	7.5	7.5	7.5	7.5	7.5	7.5	7.5	7	6
28	P from Tacoma	20	17	14	12	10	8	7	6	5	4
27	CP rom Vancouver East	27	23	18	14	13	10.5	9	11	10	7
30	OSL West from Ogden	23	19	17	15	14	13	11	9	8	7
28	S P from Portland	23	19	16	14	12	12	10	9	6	5
32	SPLA from Salt Lake	28	24	20	17	14	14	11	10	7	5
34	SPS from Spokane	27	23	19	16	14	13	12	9	7	5
34	GNE from Albany	27	24	20	17	15	15	13	10	6	4
28	NRNC from Bellingham	28	24	20	17	14	14	11	8	7	6
30	S V from Baker City	25	20	27	24	21	18	16	13	11	9
30	G S from Dalles	28	25	20	17	15	14	11	10	9	8
30	P H from Hillsboro	27	24	20	17	15	15	13	10	8	6
30	Spokane Inld fm Spokane	20	18	16	15	13	12	9	8	7	6
30	ORAM from Spokane	20	18	16	14	13	12	9	8	7	6
34	NP from Spokane	20	18	16	14	13	12	9	8	7	6
34	G N from Spokane	21	20	18	16	16	14	11	9	8	6

39	ORAM	15	13	12	10	8	12	10	10	9	7
36	G.N.	7.5	7.5	7.5	7.5	7.5	7.5	7.5	7.5	7.5	7
39	N.P.	30	25	21	18	15	12	10	8	6	5
38	C.P.	31	25	21	16	15	13.5	11	12	11.5	8
39	O.S.L.	27	23	21	17	16	15	13	10	9	7
40	S.P.	28	23	19	17	15	16	12	10	7	6
44	S.P.L.A.	37	31	27	22	19	19	15	13	9	7
38	S.P.S.	30	25	21	18	15	17	14	11	8	6
37	C & E.	32	25	25	21	19	19	16	11	8	7
40	B B & B C	34	29	24	20	17	17	14	10	9	7
40	S.V.	46	42	38	34	31	28	25	23	21	19
40	T.R.	32	28	25	21	19	19	16	11	7	7
36	Spokane Int.	23	20	18	16	16	14	11	9	8	7
39	Spokane Fld.	20	18	16	14	13	12	9	8	7	6
40	ORAM from Spokan	23	20	18	16	16	14	11	9	8	7
41	N.P. " "	22	20	18	16	16	14	11	9	8	7
41	S.N. " "	22	20	18	16	16	14	11	9	8	9



Distance.	1.	2.	3.	4.	5.	A.	B	C	D	E
82 O.R & N.	18	15	13	12	9	13	10	10	10	7
1 G.N.	28	20	17	15	14	13	11	9	8	7
1 N.P.	40	34	28	24	20	17	15	12	10	8
48 C.P.	35	29	24	18	17	14.5	12	13	12.5	9
49 O.S.L.	28	25	23	18	17	16	13	10	9	8
50 S.P.	25	22	19	17	15	15	13	10	8	7
48 S.P.L.A.	40	34	28	24	20	20	16	14	10	8
51 S.P.W.	41	35	29	25	22	23	18	14	10	8
47 C.& E.	37	32	28	24	22	22	19	12	8	7
54 S.V.	50	45	40	36	33	30	28	28	24	22
50 P.E.	37	32	29	24	22	23	19	12	8	7
53 S Int.	30	27	24	20	20	18	14	11	10	9
49 S Inland	25	22	20	18	18	15	12	10	9	7
49 ORAN from Spokane	25	22	20	18	18	18	12	10	9	7
49 N.P. from Spokane	25	22	20	18	18	15	12	10	9	7
51 G.N. from Spokane	25	22	20	18	18	15	12	10	9	7
58 O R & N.	20	16	14	12	9	13	10	10	10	7
60 G.N.	32	26	22	19	18	17	15	12	10	7
60 N.P.	44	37	31	26	22	22	18	13	11	9
1 C.P.	41	34	27	21	19	17.5	13	14.5	15	10.5
57 O.S.L.	46	39	30	25	22	20	18	16	13	10
60 S.P.	36	24	21	20	18	17	15	13	9	8
60 S.P.L.A.	46	39	32	28	26	23	18	16	12	9
57 S.P & N.	44	37	31	26	22	24	20	15	11	9
59 C & E	39	34	30	27	24	24	20	13	9	8
62 S.V.	55	48	43	40	37	34	31	29	27	25
58 S Int.	30	27	24	20	20	18	14	11	10	9
60 S Inland	30	27	24	20	20	18	14	11	10	9
61 O R & N from Spokane	30	27	24	20	20	18	14	11	10	9
58 N.P. from Spokane	30	27	24	20	20	18	14	11	10	9
61 G.N. from Spokane	3 0	26	23	20	20	19	15	12	11	9
66 O R & N	20	17	15	12	9	13	12	10	10	7
66 G N	35	29	25	21	19	18	16	13	11	8
67 N.P.	48	41	34	29	24	24	19	14	12	10
63 C.P.	41	34	27	21	19	17.5	13	14.5	15	10.5
58 O.S.L.	46	39	32	26	23	22	18	16	14	11
68 S.P.	38	25	22	20	18	17	17	13	10	9
70 S.P.L.A.	48	41	34	29	24	24	19	17	12	10
S P & N.	52	44	36	31	26	29	23	18	13	10
68 C & E	42	37	33	29	27	26	22	14	11	9
65 S Int	34	29	26	22	22	20	16	13	12	10
70 S Inland	34	29	26	22	22	20	16	13	12	10
70 ORAN from Spokane	30	27	24	20	20	18	14	11	10	9
68 N.P. from Spokane	34	29	26	22	22	20	16	13	12	10
66 G.N. from Spokane	40	34	28	24	24	23	19	14	12	10

CLASS RATES—LOCAL TARIFF 3.

Distance.	1a	a	3	4	B	A	B	C	D	E
77 S R & N	28	30	18	18	10	12	13	14	10	7
77 S N	40	35	29	24	22	20	16	14	11	8
87 N.P.	48	41	34	29	26	24	19	14	12	10
91 C.P.	45	38	29	22	20	18	14	15	12	11
91 O.R.L.	50	45	34	27	23	22	20	16	14	11
99 O.P.	58	50	22	30	16	17	17	13	11	10
99 S.P.L.A.	52	44	36	31	26	26	22	18	13	10
80 S P & N.	62	53	43	37	31	34	30	22	16	12
78 C & N	45	39	35	32	29	28	25	15	11	10
78 S Int.	38	31	28	24	24	22	18	15	13	10
78 S Inland	34	29	26	22	22	20	16	13	12	10
82 ORAN from Spokane	34	29	26	22	22	20	16	13	12	10
79 N.P. from Spokane	36	31	28	24	24	22	18	15	13	10
78 O W from Spokane	42	36	30	26	26	26	21	18	13	10
90 O R &	37	32	30	17	12	15	3	12	10	7
90 O W	48	40	35	28	27	24	21	16	13	10
89 N P	56	48	39	34	28	28	22	17	14	11
98 C P	47	39	31	24	22	19.5	15	16.5	15	12.5
O S L	53	45	36	29	24	25	23	20	15	12
86 S P	39	37	34	22	21	21	19	16	12	10
92 S PL A	50	49	41	29	29	29	23	20	13	12
90 S P & N	90	60	49	42	35	39	32	25	18	14
90 SInt.	40	32	29	25	25	24	20	16	14	11
90 O R & N from Spokane	44	35	31	28	28	25	25	17	14	11
91 N.P.	44	35	31	28	28	28	23	17	15	12
92 O W from Spokane	48	39	33	29	29	29	23	17	15	12
99 O.R & N	34	28	25	21	16	16	15	12	10	7
100 O W	55	45	41	34	30	28	23	17	14	11
99 N P	60	51	42	36	30	30	24	18	15	12
96 C P	54	45	36	27	25	21	16	17.5	19.5	14
100 O S L	53	45	36	29	24	25	23	20	15	12
97 S P	35	33	29	27	25	23	21	17	13	11
92 S P L A	60	51	42	36	30	30	24	21	15	12
101 S P & N	76	65	53	46	38	42	34	27	19	15
96 S Int	44	38	31	28	28	28	24	16	16	12
101 O R & N from Spokane	47	39	34	30	30	30	25	19	14	12
101 N P from Spokane	48	39	33	29	29	29	25	19	16	12
99 O W from Spokane	50	42	36	30	30	30	24	18	15	12

CLASS--RATES--LOCAL TARIFFS.

Distances.		1	2	3	4	5	A	B	C	D	E
110	O R & N	48	38	32	27	22	22	16	14	11	9
109	G N	68	62	46	39	33	29	25	19	16	13
107	N P	64	54	45	37	32	28	26	19	16	13
109	C.P.	60	50	40	30	27	23	17	19	22	15
111	O S L.	58	46	37	32	25	27	24	26	18	14
110	S P	40	37	33	30	28	26	23	19	14	11
109	S P L.A.	64	54	45	38	32	32	26	23	16	13
110	S P & S.	78	63	55	47	39	43	35	27	20	16
110	Spokane Int.	49	42	34	30	30	30	28	19	16	13
108	O R & N from Spokane	47	39	34	30	30	30	25	19	16	12
108	NP from Spokane	50	42	36	30	30	30	28	20	17	13
107	G N from Spokane	56	48	39	33	32	32	26	19	16	13

CLASS RATES --- LOCAL TARIFFS.

Distance.		1	2	3	4	5	A	B	C	D	E
117	O R & N	51	43	36	31	24	24	21	16	13	11
117	G N	68	56	47	41	35	32	27	20	17	14
120	N P	68	56	48	41	34	34	27	20	17	14
114	C P	60	50	40	30	27	22	19	19	22	15
116	O S L	55	46	37	34	31	28	24	24	19	15
118	S P	45	41	38	34	32	30	24	19	14	12
218	S P L A	68	58	48	41	34	34	27	24	17	14
120	S P & N	80	68	56	48	40	44	36	28	20	16
119	S Int.	60	81	42	36	34	34	27	20	17	14
119	ORAN from Spokane	65	57	48	41	34	34	37	20	17	13
120	NP " "	58	49	41	35	30	30	27	20	17	13
122	GN " "	64	52	43	35	36	34	28	21	18	14
126	O R & N	59	49	41	35	27	27	24	18	15	12
124	N N	71	58	49	42	35	33	28	21	17	14
125	N P	70	60	49	42	35	35	28	21	18	14
123	C P	66	55	44	33	30	24	19	20	24	16
128	O S L	55	46	37	35	32	28	24	24	19	16
120	S P	48	44	41	37	34	32	26	20	15	12
223	S P L A	70	60	49	42	35	35	28	25	18	14
129	S Int.	88	70	57	49	41	45	37	29	21	16
134	ORAN from Spokane	74	63	52	44	37	35	30	22	17	13
133	NP " "	62	53	43	37	30	30	29	22	17	13
132	GN " "	66	54	45	36	36	34	30	22	19	14
141	O R & N	65	55	46	39	31	31	26	20	16	13
142	G N	78	64	54	45	39	35	30	23	19	14
140	N P	76	65	53	46	38	38	30	23	19	15
140	C P	72	60	48	36	32	26	20	22	26	16-1/2
142	O S L	65	54	45	37	32	31	30	27	22	16
140	S P	52	47	43	40	36	34	29	21	16	13
139	S P L A	76	65	53	46	38	38	30	27	19	15
140	S P & N	84	71	59	50	42	46	38	29	21	17
141	S Int.	64	55	44	38	38	38	31	23	19	15
136	ORAN from Spokane	76	65	53	46	38	38	30	23	17	13
141	NP " "	72	62	51	44	36	38	31	23	20	15
136	GN " "	68	55	45	37	35	35	30	23	19	15

CLASS RATES --- LOCAL TARIFFS.

Distances.		1	2	3	4	5	A	B	C	D	E
150	O R & N	70	60	50	43	33	33	28	21	18	14
146	C N	80	66	56	46	40	36	31	23	19	15
145	N P	78	66	55	47	39	39	31	23	20	15
147	C P	76	54	51	48	34	28	21	23	28	17-1/2
150	O S L	70	56	47	40	35	34	33	29	23	17
149	S P	56	50	46	42	39	36	29	22	16	13
153	S P L A	82	72	57	49	41	41	33	29	21	16
150	S F & N	84	71	59	50	42	46	38	29	21	17
141	O R & N	75	63	53	45	38	35	30	23	19	15
165	O N	85	70	60	50	43	39	34	25	20	15
161	N P	86	75	60	52	43	43	34	26	22	16
161	C P	78	65	52	39	35	29	22	23.5	29	18
160	O S L	70	56	47	40	35	34	33	29	23	17
160	S P	58	52	49	45	41	38	30	22	17	14
158	S P L A	84	74	59	50	42	42	34	29	21	17
[illegible]	S F & N	84	71	59	50	42	46	38	29	21	17
170	O R & N	78	65	55	47	37	37	32	24	20	16
172	O N	85	70	60	50	44	39	34	25	20	15
168	N P	88	75	62	53	44	44	36	26	22	16
166	C P	80	67	54	40	36	30	22	24	30	18-1/2
170	O S L	70	60	50	43	35	35	34	31	24	17
167	S P	61	55	51	47	43	39	31	23	17	14
169	S P L A	88	78	62	53	44	44	36	31	22	18
171	S F & N	84	71	59	50	42	46	38	29	21	17
179	O R & N	83	69	58	50	39	39	33	25	21	17
177	O N	88	70	60	50	44	39	34	25	20	15
180	N P	92	78	64	55	46	46	37	27	23	17
178	C P	86	72	57	43	38	32	23	25	32	19-1/2
174	O S L	70	66	57	50	40	39	38	33	27	20
181	S P	67	59	55	50	46	42	34	24	18	15
179	S P L A	92	83	64	55	46	46	37	32	23	18
180	S F & N	84	71	59	50	42	46	38	29	21	17

CLASS RATES --- LOCAL TARIFFS.

Dist-ce.		1	2	3	4	5	A	B	C	D	E
193	O R & N	89	74	62	53	42	42	36	27	22	16
190	G N	92	78	64	54	47	42	37	28	22	16
190	N P	96	81	67	58	46	46	38	27	23	17
190	C P	90	75	60	45	40	33.5	25	26	33.5	20-1/2
193	O S L	70	66	57	50	40	39	38	34	27	20
193	S P	70	62	57	53	48	44	38	24	18	18
189	S P L A	96	84	67	58	48	48	38	34	24	19
190	S P & N	84	71	59	50	42	46	38	29	21	17
201	O R & N	91	76	64	55	43	43	36	27	23	18
201	G N	96	82	67	57	49	44	39	28	22	16
200	N P	97	81	68	58	46	46	39	28	24	18
196	C P	92	77	61	46	41	34.5	25	26.5	34.5	20.5
200	O S L	90	80	67	60	45	45	42	35	28	21
198	S P	72	64	59	55	50	45	36	25	18	15
199	S P L A	100	85	70	60	50	50	40	35	25	20
200	S P & N	84	71	59	50	42	46	38	29	21	17
220	O R & N	99	83	69	59	47	47	40	30	25	20
217	G N	101	86	73	63	53	48	43	32	24	17
221	N P	97	81	68	58	46	46	39	29	24	19
219	C P	99	82	65	49	44	36.5	27	28	36.5	22
216	O S L	91	81	68	61	48	44	43	38	30	21
220	S P	80	70	65	60	55	50	39	26	20	17
217	S P L A	108	92	76	65	54	54	43	38	27	22
236	O R & N	105	88	74	63	50	50	42	32	26	21
230	G N	107	93	79	69	57	52	46	38	26	19
238	N P	97	81	68	58	46	46	39	29	24	19
236	C P	105	88	70	53	47	39.5	29	29.5	39.5	23.5
234	O S L	92	82	69	62	49	44	43	40	31	22
239	S P	86	76	70	65	59	53	42	27	20	17
238	S P L A	114	97	80	69	57	57	46	41	28	23
263	O R & N	115	97	81	68	55	55	46	38	29	23
263	G N	114	98	86	74	59	56	50	38	28	21
262	N P	114	180	83	71	57	55	47	38	26	20
259	C P	111	93	74	55	50	42	31	31	42	28
258	O S L	996	88	78	68	55	55	47	43	33	24
259	S P	94	82	76	70	63	58	46	29	22	19
257	S P L A	124	105	87	74	62	62	50	43	31	25

CLASS RATES --- LOCAL TARIFFS

Distances.		1	2	3	4	5	A	B	C	D	E
280	O R & N	123	103	86	74	59	59	49	37	31	25
[illegible]	G N	118	103	89	75	60	59	51	40	30	22
[illegible]	N P	116	105	88	75	60	55	47	36	26	20
278	C P	117	98	78	59	53	44.5	32	38.5	44.5	26
278	O S L	105	95	80	70	58	55	49	45	35	25
280	S P	101	88	82	77	68	62	49	30	22	19
278	S P L A	132	112	92	79	66	66	53	46	33	26
297	O R & N	129	108	90	77	62	60	52	39	32	26
296	G N	123	109	94	77	62	62	52	42	32	23
298	N P	120	108	89	79	65	55	48	37	27	20
300	C P	123	103	82	62	56	47	33	34	47	27-1/2
305	O S L	112	99	88	72	60	57	55	47	37	27
297	S P	107	93	86	80	72	65	51	31	23	20
299	S P L A	140	120	99	88	71	71	56	49	35	28
[illegible]	O R & N	138	115	95	80	65	60	53	43	33	26
314	G N	129	114	95	78	63	63	53	43	34	24
314	N P	123	110	90	80	65	56	49	38	28	21
316	C P	129	108	86	65	59	49.5	35	35.5	49.5	29
314	O S L	114	99	87	72	60	56	55	47	37	27
320	S P	118	100	92	86	77	70	55	33	25	22
319	S P L A	150	132	109	95	79	75	60	53	39	32
336	O R & N	135	120	95	80	65	60	55	44	35	26
336	G N	135	120	95	80	65	65	55	44	36	26
339	N P	127	112	90	80	65	59	51	40	30	21
335	C P	135	113	90	68	61	51.5	37	36.5	51.5	30
336	O S L	120	105	89	73	60	58	57	48	38	28
341	S P	123	107	99	91	82	74	58	34	26	23
338	S P L A	160	144	119	105	87	79	63	56	43	36

CLASS RATES --- LOCAL TARIFFS

Distance		1	2	3	4	5	A	B	C	D	E
356	O R & N	135	120	95	80	65	60	55	46	36	26
356	G N	138	120	97	83	68	68	55	47	36	27
360	N P	135	120	94	80	65	62	52	42	32	23
359	C P	143	119	95	72	65	55	38	38	35	32
357	O S L	123	108	92	76	62	80	58	49	39	29
358	S P	129	112	108	95	86	78	61	35	26	23
358	S P L A	171	157	130	113	98	83	66	59	47	40
376	O R & N	140	130	95	82	67	65	55	46	36	26
376	G N	142	121	99	85	71	71	57	48	36	28
379	N P	138	120	96	80	65	64	54	44	35	25
380	C P	148	124	99	74	67	57	39	39	37	33
379	O S L	125	110	95	85	75	75	62	50	40	30
	S P L A	181	170	140	123	103	87	69	62	51	44
400	O R & N	140	130	95	82	67	65	55	46	36	26
401	G N	147	125	103	85	74	74	59	49	37	29
400	N P	135	120	95	80	65	65	55	44	36	26
399	C P	158	132	105	79	71	60.5	42	41	38.5	38.5
403	O S L	138	126	111	100	81	76	64	54	42	34
398	S P L A	182	183	151	133	111	91	72	64	58	47

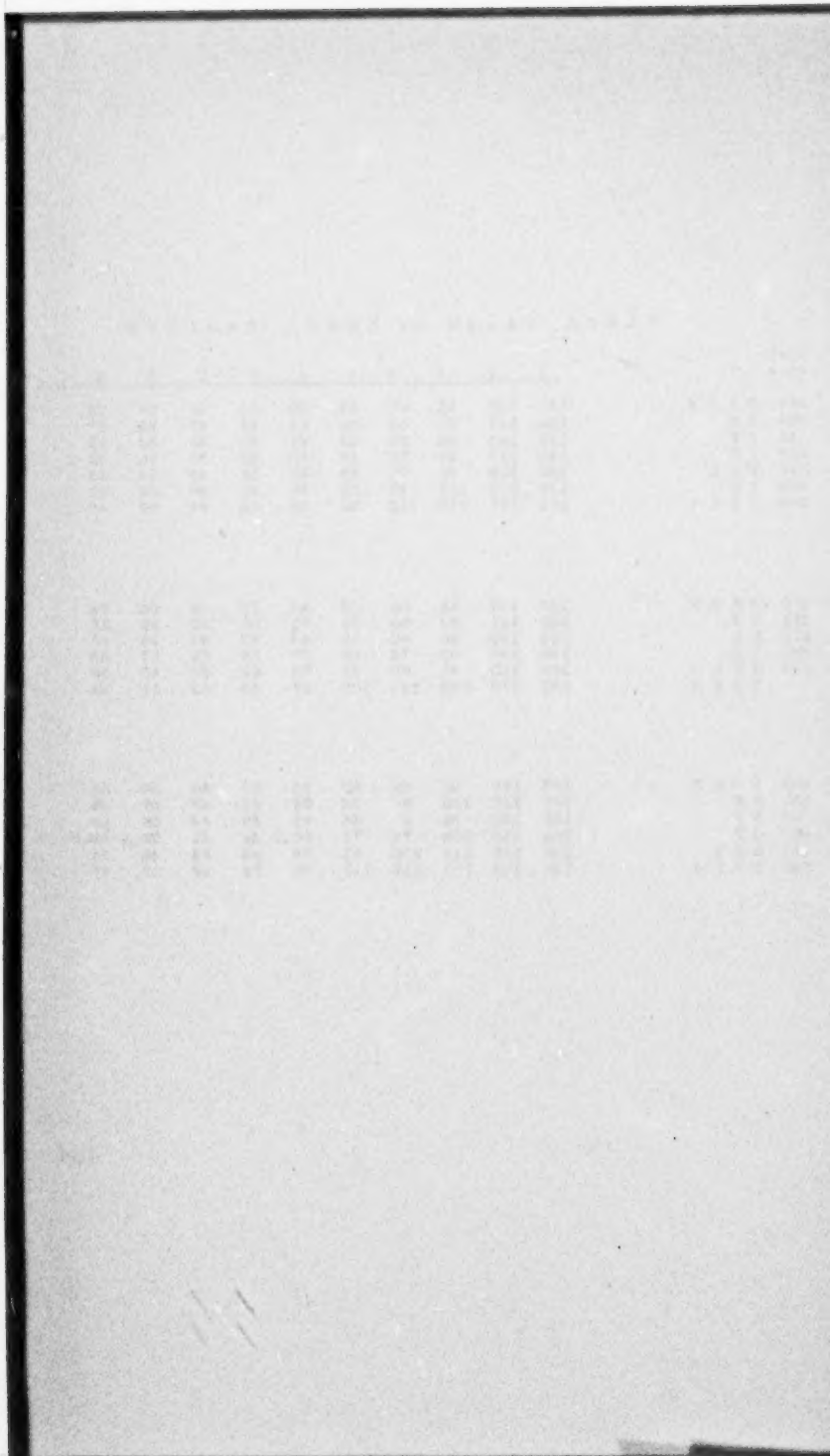


TABLE 83.—*Showing the Comparative Price of Lumber for the Past Seven Years, as Shown by the Records of the Booth-Kelly Lumber Co.*

Customer.	Order.	Date.	Year.	Ties.	Timbers.	String.	Ro. fram.	Ro. sills, 36 to 40.
S. P. Co	32030	11/6-'06	1907				21.00	23.00
C. & N. W	P-67278	8/6-'07		Sls. 13.50	13.50	16.50		
S. P. Co	12544	5/17-'06	1906				18.00	21.00
C. & N. W	P-11165	11/3-'05		Sls. 9.45	8.50	9.50		
S. P. Co	H-453	5/29-'05	1905				15.00	16.00
C. & N. W	P-92961	3/31-'05			7.25	7.75		
S. P. Co	H-193	3/11-'05		Sls. 8.50				
S. P. Co	H-267	5/2-'04	1904				15.00	15.00
S. P. Co	H-419	7/23-'04			8.00			
S. P. Co	H-291	5/19-'04				8.50		
S. P. Co	H-467	8/25-'04		Ro. 8.50				
S. P. Co	H-576	4/24-'03	1903				16.00	16.00
C. & N. W	P-46238	12/5-'02		Sls. 9.70	8.50	9.50		
S. P. Co	H-1810	12/30-'02	1902				14.00	15.00
S. P. Co	H-831	6/17-'02			8.00	10.00		
C. & N. W	P-32216	3/28-'02		Sls. 8.00				
S. P. Co	E/L1864	7/1-'01	1901	Ro. 7.00				
S. P. Co	H-860	8/23-'01				8.50		
S. P. Co	H-853	8/23-'01			7.50			
S. P. Co	H-278	3/20-'01					12.00	12.00

486 ANDERSON EX. See p. 42.

History of Rate on Lumber from Various Points on Southern Pacific Company's Lines in Oregon to Various Points in California.

The rate is what is known as the 3.10 rate and 3.10 rate scale or basis.

The 3.10 rate proper applied to San Francisco, Oakland and a few other points designated as San Francisco Bay Points.

The 3.10 scale applied to various points just beyond the Bay points, the rates to which were based on the 3.10 rate plus local rate from San Francisco back, within a radius of what would be less than $5.00 when the local was added to the $3.10.

The Tariffs in which rate is found are as follows:

Southern Pacific Company,
Lumber Tariff No. 2, I. C. C. #1301;
Southern Pacific Company,
Lumber Special No. 1, I. C. C. #1671;
Southern Pacific Company,
Interstate Commodity Rate #7, I. C. C. #2268;
Southern Pacific Company,
Local Freight Tariff #47, I. C. C. #2874.

This rate first made its appearance in Amendment #4 to Southern Pacific Company Lumber Tariff No. 2, I. C. C. 1301 Feb. 20, 1899, and applied as a 3.10 scale on Lumber of all kinds, from Portland, East Portland, Saginaw, Coburg and Albany only.

In amendment 13 effective April 22, 1899, the 3.10 rate proper was put in from foregoing points to San Francisco, Oakland and a few other Bay points.

487 Amendment 14 effective April 20, 1899, made the scale applicable from Dallas on the Yamhill Division.

In August, 1899, under Amendment 29 both the rate proper and the scale were made to apply from Portland, Jefferson Street.

On January 1, 1900, South Pacific Co. Lumber Tariff #2, I. C. C. #1301, a flat rate of 3.10 per ton was installed from

Portland, Oregon. } 162 miles.
Drain, Oregon. }

and points between these two; also Woodburn, Springfield Branch,

to

San Francisco and a few Bay Points.

$3.50 to Stockton, Sacto, San Jose and Santa Clara.

$4.10 to Elmira and Vacaville.

$4.60 to Winters.

The $3.10 flat rate and these others comprise what is termed the $3.10 scale.

At the same time this scale was also made effective from Portland (Jefferson St.) and all points on West Side and Yamhill Divisions of South Pacific Company's Lines. These rates were just 25c. in excess of rates from Portland—Drain, viz:

$3.35 to San Francisco Bay Points.
$3.[illegible] to Stockton, etc.
$4.35 to Elmira and Vacaville.
$4.85 to Winters.

At this time the rate applied on Lumber only; but on October 25, 1900, it was modified so as to include Lath and Fence Posts.

488 On August 15, 1902, forwarding territory extended 101 miles beyond Drain to Glendale.

On June 16, 1902, forwarding territory was extended to Lebanon on Lebanon Branch and application was definitely limited to fir and other soft lumber.

Several additional receiving points were also added.

On August 20, 1903, rate from
Portland to Glendale,
East Portland,
Portland, Jefferson St.,
was cancelled and *raised* to $5.00.

On August 20, 1903, $3.10 scale was made to extend from Salem to Glendale and points between these two,
Woodburn, Springfield Branch,
And Lebanon Branch.

On this date also application was limited to Green Lumber.

On November 1, 1903, Amendment 89 to I. C. C. 1671 raised the rate from Portland, East Portland and Portland, Jefferson St., to $7.50 per ton, but it was reduced to $5.00 per ton basis on December 7, 1903, by amendment 92 to I. C. C. #1671 since which time it has not been changed.

On December 7, 1903, forwarding points were further modified by limiting Woodburn, Springfield Branch, to points South of Tallman and main line territory to points Albany to Glendale.

On January 1, 1904, rate from all points in Oregon was raised to $5.00 per ton.

489 On May 10, 1904, in Amendment 117 to I. C. C. 1671, the $3.10 scale reinstated substantially as follows:

From
Portland,
East Portland,
California-Oregon State Line and points between,
Woodburn-Springfield Branch, Tallman and South,
Lebanon Branch,
To
Points other than San Francisco and others designated as Bay Points,
Rate of
$3.55 to $4.90 per ton.
From
Portland (Jefferson St.),
All points on West Side and
Yamhill Divisions, including
Sheridan Branch,

To

Points other than San Francisco and others designated as Bay Points,

Rate of

$3.80 to $4.95 per ton.

From

Salem to California-Oregon State Line and points between, Woodburn, Springfield Branch, Tallman and South and Lebanon Branch,

To

San Francisco and other designated as Bay Points flat rate of $3.10 per ton

490 From

Airlie,
Tualatin and points between, including Sheridan Branch on Yamhill Division,
Corvallis,
Beaverton and points between on West Side Division, rate of $3.35 per ton.

On April 18, 1907, above rates to all points were superseded by $5.00 rate, as per Southern Pacific Co. Local Freight Tariff # 47, I. C. C. # 2874, which is in effect now.

EXHIBIT -D-

STAPLE COMMODITY RATES

	Sugar	Can'd Goods	Salt	Rice	Beans	Dried Fruit
San Francisco to Portland, Rail	15-1/2	18	15-1/2	28	10	18
San Francisco to Eugene, Rail	45-1/2	46	30	56	46	51
Portland to Eugene	33	33	20	33	33	36

CLASS RATES

	1	2	3	4	5	A	B	C	D	E
San Francisco to Portland, Rail	51	41	41	41	26	28	28	28	28	28
San Francisco to Eugene, Rail	91	77	74	71	58	56	50	45	40	37
Portland to Eugene	46	42	39	36	33	31	25	20	15	12

All Rail Rates from San Francisco to Eugene and other points South of Portland are based on the rates by rail San Francisco to Portland, plus the local rates Portland to destination, less 6 cents per 100-lbs. L.C.L., and 3 cents per 100-lbs. C.L.

This deduction is made in order to more equalize via all rail, the combination of the water and rail rates.

Rates by Rail San Francisco to Portland are, generally speaking, 6 cents L.C.L. and 3 cents C.L. higher than the rates by Water.

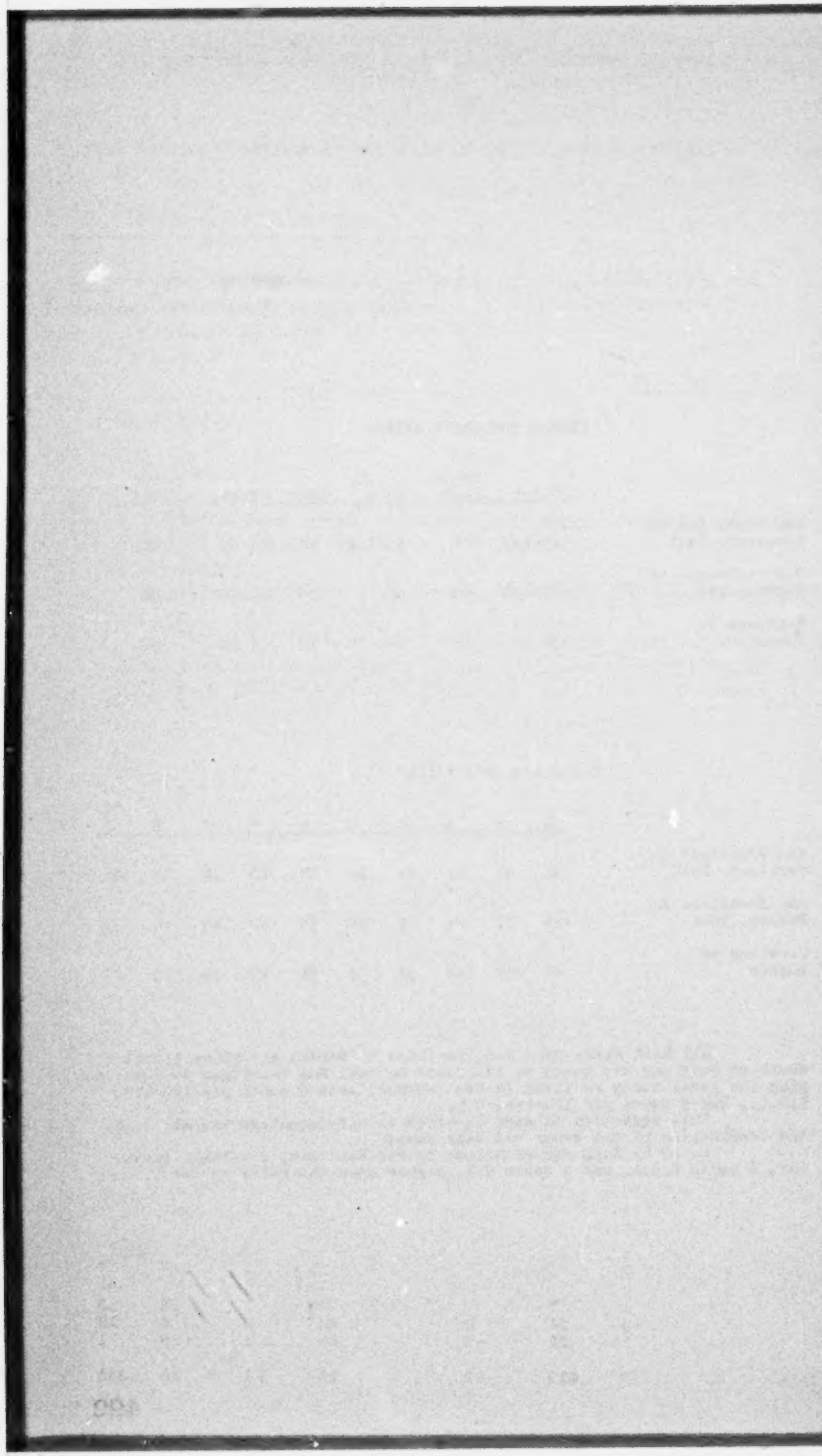


EXHIBIT B

SACRAMENTO DIVISION

STATEMENT OF

FREIGHT TRAINS IN AND OUT OF ASHLAND & NUMBER OF ENGINES & CARS IN EACH TRAIN DURING FIRST 7 DAYS OF FEBRUARY, JUNE & NOVEMBER.

1907.

SOUTH BOUND					NORTH BOUND				
Date	Train	Engines	Loads	Mtys.	Date	Train	Engs.	Loads	Mtys.
Feb. 1	Ex.	3	18	6	Feb. 1	226	1	4	
	225	1	6	1		222	2	18	8
						Ex.	2	12	
2	Ex.	1	9	4	2	226	1	3	2
	221	3	20	4		Ex.	2	11	8
						Ex.	2	19	4
3	Ex.	3	21	3	3	222	2	19	
	225	2	11			226	1	5	6
	221	3	21			Ex.	2	21	
4	Ex.	3	21		4	222	3	21	3
	225	1	9			226	1	7	4
	Ex.	3	20			Ex.	2	3	27
	Ex.	3	18	7					
5	225	1	5		5	Ex	3	25	
	221	3	20	1		222	2	15	
						Ex	2	20	
						226	1	6	
						Ex	2	16	4
6	Ex	3	22	2	6	226	1	8	
	Ex	2	10	1		Ex	2	11	6
	225	1	4			Ex	2	6	14
	Ex	3	22						
	221	3	13	4					
7	225	1	6		7	222	2	17	
	221	3	23			226	1	6	5
	Ex	3	20	3		Ex	2		30
	Ex	3	22	3					
Total	22	82	346	39		23	41	273	121
June 1	225	2	13	2	June 1	Ex	3	32	
	Ex	3	22	2		Ex	2	27	
	Ex	3	24	1		Ex	3	23	12
	Ex	3	21	3		Ex	2		13
						Ex	1	1	16
2	225	2	12		2	222	3	32	
	Ex	2	14	2		Ex	3	31	
	Ex	3	24	2		Ex	1		18
3	225	2	12		3	226	1	7	2
	Ex	3	24	1		Ex	2	16	11
						Ex	3	23	3
						Ex	1	1	17
4	225	2	12		4	222	2	15	
	Ex	3	25	2		Ex	3	32	1
	Ex	3	21	9					
5	225	2	12		5	222	2	4	26
	221	3	27			Ex	3	23	12
	Ex	3	20	4		Ex	3	27	
						Ex	2		20
6	Ex	3	23		6	Ex	3	33	
	225	3	12			Ex	3	18	17
	Ex	3	23	3		Ex	3		35
7	225	1	7		7	222	3	16	13
	Ex	3	24	2		Ex	2	6	16
	Ex	3	22	3		Ex	3	28	1
Total	22	58	412	42		24	57	96	233

	SOUTH BOUND					NORTH BOUND			
Date	Train	Engines	Loads	Mtys.	Date	Train	Engs	Loads	Mtys.
Nov. 1	Ex	2	16	8	Nov.1	Ex	3	22	2
	226	1	8	9		225	2	13	
	222	2	4	28		Ex	2	8	
						Ex	3	25	1
						Ex	3	24	
2	Ex	1	12		2	225	2	17	
	Ex	3	24	6		Ex	1	11	
	Ex	2	15	2		Ex	3	22	4
	222	2	13	18					
3	222	3	19		3	Ex	3	21	2
	Ex	1	10			Ex	3	24	
	Ex	1	5	4		225	2	10	
						Ex	3	23	1
4	Ex	1	8		4	225	2	11	2
	Ex	1	10			Ex	3	22	2
	222	2	20	1		Ex	3	28	1
5	Ex	2	20		5	225	1	6	
	Ex	3	18			Ex	3	28	
	Ex	3	10	9					
	222	3	26						
6	Ex	2	7	2	6	Ex	3	23	
	222	3	21			225	2	12	
						Ex	3	26	1
						Ex	3	24	
7	Ex	3	19	1	7	225	2	13	
	Ex	2	14			Ex	3	25	
	Ex	1	6			Ex	3	21	
	222	3	19-	6					
TOTAL	23	47	324	92		24	61	449	16

1905

	NORTH BOUND					SOUTH BOUND			
Feb. 1	Ex	3	17	13	Feb. 1	225	3	10	1
	226	3	7	23		Ex	3	17	3
	222	3	16	19		221	3	20	2
2	226	1	6	14	2	225	2	3	3
	222(1)	3	15	14		221	3	18	4
	222(2)	2	7	19					
3	226	2	4	17	3	225	2	9	
	222(1)	2	5	7		Ex	3	19	
	222(2)	2	18			Ex	3	16	
						221	3	20	1
4	226	2	6	2	4	225	2	7	5
	222(1)	2	6	15		Ex	3	18	2
	222(2)	2	18	4		221	3	18	5
5	226	2	5	21	5	225	2	7	9
	Ex	3	22	4		Ex	3	5	18
	222	3	20	6					
6	222	3	24		6	225	2	10	1
	226	1	4			Ex	3	14	5
	Ex	2	5	1					
7	Ex	3	16	3	7	Ex	3	3	17
	226	1	4	1		225	2		10
	222	3	14	14		Ex	3		22
TOTAL	21	48	239	197		19	51	212	108

NORTH BOUND					SOUTH BOUND				
Date	Train	Engines	Loads	Mtys.	Date	Train	Engs	Loads	Mtys.
June 1	226	2	7		June 1	225	2	5	2
	Rx	3	24		1	221	3	24	1
2	221	2	18		2	225	1	6	
	226	1	2	8		221	3	25	
	Rx	2	19	1					
3	226	2	6	26	3	225	1	6	1
	Rx	3	28			221	3	25	1
4	222	2	7	22	4	225	2	10	2
	226	2	26			221	3	22	2
	Rx	2	19						
5	222	3	24	11	5	225	2	9	
	226	1	1	3		221	3	22	2
	Rx	3	14						
6	226	1	4	6	6	225	1	2	2
	Rx	3	28			Rx	3	17	15
	Rx	1	9	1					
7	226	1	3	1	7	225	3	14	1
	Rx	3	20	6		221	3	23	
	Rx	2	4	12					
TOTAL	19	39	239	124		14	33	210	29
Nov. 1	Rx	2	8	9	Nov. 1	225	2	11	
	222	3	15	11		221	2	21	
	226	1	2	2		Rx	3	20	
						Rx	3	19	
2	222	3	27	1	2	225	2	10	1
	226	1	2	2		221	3	16	2
	Rx	2	9			Rx	3	25	
	Rx	2	4	26					
3	226	1	1	4	3	225	2	10	1
	Rx	1	4	6		221	3	25	
						Rx	3	19	1
4	Rx	3	19	3	4	225	2	9	3
	226	1	3	3		221	3	26	
	Rx	3	23			Rx	2	15	
	Rx	3	23			Rx	3	19	
5	226	1	6	2	5	225	2	10	2
	Rx	1	25	1		221	3	24	
	Rx	1	5	1		Rx	3	21	
6	226	1	3	6	6	225	2	9	1
	Rx	2	18	1		221	3	22	
						Rx	3	20	
7	222	3	27		7	225	2	10	1
	226	1	6			221	3	21	
	Rx	3	7			Rx	3	22	
TOTAL	21	39	237	78		23	60	404	12

EXHIBIT -A- Page 1.

FEBRUARY 1908 WEST

INTO ASHLAND FROM NORTH

DATE	TRAIN	NO OF ENGINES	LOAD	EMPTIES
Feb.1	221	1	29	
	225	1	11	
	Ex.West	1	18	
2	221	1	15	2
	225	1	24	
3	221	1	26	1
	225	1	19	
4	221	1	15	
	225	1	15	8
	Ex.West	1	12	4
	Ex.West	1	14	
5	221	1	8	
	225	1	7	
	Ex.West	1	11	1
	Ex.West	1	9	8
6	221	1	16	
	225	1	16	
	Ex.West	1	15	
7	221	1	15	5
	225	1	15	
	Ex.West	1	14	1
Total	21 Trains	21	306	22

FEBRUARY 1908 EAST

OUT OF ASHLAND TO NORTH

Feb. 1	222	1	17	27
	226	1	4	15
2	226	1	5	27
	Ex.East	1	13	19
3	226	1	5	1
	Ex.East	1	4	19
	Ex.East	1	12	22
4	226	1	5	38
	Ex.East	1	19	
5	222	1	21	19
	226	1	4	22
	Ex.East	1	20	5
6	222	1	20	6
	226	1	5	20
	Ex.East	1	6	5
7	222	1	24	
	226	1	3	1
	Ex.East	1	13	3
	16 Trains	16	200	248

EXHIBIT -A- Page 2.

JUNE 1905 WEST

INTO ASHLAND FROM NORTH

DATE	TRAIN	NO OF ENGINES	LOAD	EMPTIES
June 1	221	1	14	
	225	1	10	
	Ex.West	1	13	
2	221	1	16	
	225	1	11	
3	221	1	16	
	225	1	13	1
	Ex.West	1	15	
	Ex.West	1	12	
4	221	1	13	
	225	1	11	1
5	221	1	13	
	225	1	13	1
	Ex.West	1	12	
6	221	1	17	
	225	1	15	
	Ex.West	1	13	
7	221	1	14	
	225	1	14	1
	Ex.West	1	27	1
Total	20 Trains	20	252	5

JUNE 1905 EAST

OUT OF ASHLAND TO NORTH

June 1	226	1	7	
	Ex.East	1	33	
	Ex.East	1	1	21
	Ex.East	1	8	12
2	226	1	3	3
	Ex.East	1	18	
3	226	1	1	9
	Ex.East	1	19	1
4	226	1	8	28
	Ex.East	1	Cab	
	Ex.East	1	48	
	Ex.East	1	5	23
5	226	1	3	26
	Ex.East	1	18	
	Ex.East	1	33	
6	226	1	6	16
	Ex.East	1	26	
7	226	1	1	6
	Ex.East	1	14	
Total	19 Trains	19	229	145

NOVEMBER 1908 WEST

INTO ASHLAND FROM NORTH

DATE	TRAIN	NO OF ENGINES	LOAD	EMPTIES
Nov.1	221	1	12	
	225	1	8	
	Ex.West	1	10	
2	221	1	26	
	225	1	12	
	Ex.West	1	17	
	Ex.West	1	24	
3	221	1	14	
	225	1	18	
	Ex.West	1	12	
	Ex.West	1	14	
4		1	16	
	225	1	9	
	Ex.West	1	13	
	Ex.West	1	18	
5	221	1	14	
	225	1	10	
	Ex.West	1	9	
	Ex.West	1	9	
	Ex.West	1	10	
6	221	1	13	
	225	1	10	
	Ex.West	1	17	
	Ex.West	1	14	
7	221	1	17	1
	225	1	11	
	Ex.West	1	12	
	Ex.West	1	15	
Total	28 Trains	28	378	2

NOVEMBER 1908 East

T OF ASHLAND TO NORTH

Nov.1	222	1	14	11
	226	1	3	
	Ex.East	1	8	11
	Ex.East	1		Cab
2	222	1	23	
	226	1	3	
	Ex.East	1		Cab
	Ex.East	1		Cab
3	222	1		8
	226	1	6	4
	Ex.East	1	7	23
	Ex.East	1		Cab
4	222	1	17	
	226	1	7	6
	Ex.East	1		Cab
	Ex.East	1	18	3
	Ex.East	1	8	6
5	222	1	23	
	226	1	6	1
	Ex.East	1	20	
	Ex.East	1	6	1
6	222	1	18	1
	226	1	3	
	Ex.East	1	5	1
	Ex.East	1		Cab
7	222	1	26	
	226	1	3	6
	Ex.East	1		Cab
	Ex.East	1	16	7
Total	29 Trains	29	236	89

EXHIBIT -A- Page 4.

FEBRUARY 1907 WEST

INTO ASHLAND FROM NORTH

DATE	TRAIN	NO OF ENGINES	LOAD	EMPTIES
Feb.1	221	1	25	
	225	1	9	
2	Ex.West	1	27	1
3	221	1	22	7
	225	1	17	
	Ex.West	1	20	
4	221	1	22	4
	Ex.West	1	23	1
	225	1	8	
5	221	1	26	
	225	1	8	
	Ex.West	1	25	1
6	221	1	24	4
	225	1	11	1
	Ex.West	1	25	3
7	221	1	22	5
	225	1	10	
	Ex.West	1	25	3
Total	18	18	342	30

OUT OF ASHLAND TO NORTH FEBRUARY 1907 EAST

Feb.1	Ex.East	1	17	6
2	226	1	6	14
	Ex.East	1	34	4
3	222	1	35	5
	Ex.East	1	13	10
4	222	1	20	1
	226	1	7	7
	Ex.East	1	9	31
5	222	1	25	
	226	1	8	2
	Ex.East	1	39	
	226	1	5	1
	Ex.East	1	19	6
7	222	1	1	
	226	1	6	14
	Ex. East	1	17	6
Total	17 Trains	17	260	107

EXHIBIT -A) Page 5.

JUNE 1907 WEST

Y .O ASHLAND FROM NORTH

DATE	TRAIN	NO OF ENGINE	LOAD	EMPTIES
June 1	221	1	17	11
	225	1	11	1
	Ex.West	1	22	3
2	221	1	21	1
	225	1	13	
	Ex.West	1	24	3
	Ex.West	1	24	
3	221	1	20	9
	225	1	3	Cab
	Ex.West	1		Cab
	Ex.West	1	28	
4	225	1	8	Cab
	Ex.West	1		Cab
	Ex.West	1	24	6
	Ex.West	1		Cab
5	221	1	25	3
	225	1	4	
	Ex.West	1	3	
6	221	1	24	3
	225	1	13	
	Ex.West	1	22	
7	221	1	31	1
	225	1	10	2
	Ex.West	1	2	
Total	24 Trains	24	349	43

JUNE 1907 EAST

T OF ASHLAND TO NORTH

June 1	226	1	6	2
	Ex.East	1	32	1
2	222	1	30	
	226	1	4	3
	Ex.East	1	28	14
	Ex.East	1	21	23
3	226	1	4	
	Ex.East	1	43	22
	Ex.East	1	27	1
	Ex.East	1	17	2
4	222	1	18	17
	226	1	12	3
	Ex.East	1	30	14
	221	1	26	
5	222	1	30	14
	226	1	6	1
	Ex.East	1	17	1
6	226	1	6	3
	Ex.East	1	24	
	Ex.East	1	4	40
7	222	1	12	32
	226	1	2	13
	Ex.East	1	16	28
	Ex.East	1	33	
Total	24 Trains	24	438	213

NOVEMBER 1907 WEST

INTO ASHLAND FROM NORTH

DATE	TRAIN	NO OF ENGINE	LOAD	MPTIES
Nov.1	221	1	28	
	225	1	10	
	Ex.West	1	18	2
2	221	1	26	
	225	1	5	
	Ex.West	1	22	1
	Ex.West	1	26	1
3	221	1	26	1
	Ex.West	1	19	20
	Ex.West	1	22	2
4	221	1	17	1
	Ex.West	1	5	
	Ex.West	1	28	
5	221	1	26	1
	225	1	8	
	Ex.West	1	25	
6	221	1	26	
	225	1	11	
	Ex.West	1	25	1
7	221	1	28	2
	Ex.West	1	26	
Total	21 Trains	21	427	32

OUT OF ASHLAND TO NORTH NOVEMBER 1907 EAST

Nov.1	Ex.East	1	25	21
	Ex.East	1	2	37
2	222	1	11	19
	226	1	12	14
	Ex.East	1	14	7
3	222	1	20	5
	226	1	9	4
	Ex.East	1	15	2
	Ex.East	1	18	18
4		1	23	1
	226	1	7	
	Ex.East	1	6	
	Ex.East	1	9	
5	222	1	23	
	Ex.East	1		Cab.
6	226	1	14	1
	Ex.East	1	9	19
	Ex.East	1	35	3
7	222	1	24	9
	226	1	8	8
	Ex.East	1	16	
Total	21 Trains	21	298	148

A-B

- 1 -

SOUTHBOUND LUMBER SHIPMENTS THROUGH ASHLAND

	Commercial Lbr.	Co. Material
1899	3954 Cars	904 Cars
1900	5219	1495
1901	7048	2395
1902	7559	#
1903	4914	#
1904	4284	#
1905	5240	#
1906	6743	1436
1907	5436	3328

(Co material shipments include lumber, ties and piling)
(No record).

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MOVEMENT OF LUMBER VIA PORTLAND

1902	2535 Cars
1903	3256
1904	1445
1905	3273
1906	6382
1907	7106

INTERCHANGE WITH O R & N CO AT PORTLAND

INTERCHANGE WITH SOU PAC PACIFIC SYSTEM AT ASHLAND

		Delivered to O.R & N. Loads	Empties	Total	Received from O.R & N. Loads	Empties	Total
OR	1905	8396	2946	11342	6066	4663	10729
	1906	15435	3413	18848	9554	11781	20327
	1907	16751	5110	21861	9361	12345	21926

Note. Interchange with OR&N includes switch cars.

500

- 3 Cont.

Pac.System	Delivered to Pac.Sys. at Ashland Loads	Empties	Total	Recd from Pac.Sys at Ashland Loads	Empties	Total
1905	15219	670	15889	11303	4229	15532
1906	23194	690	23884	14475	7859	22084
1907	23019	1162	24181	14635	10071	24706

Note. For the year 1907, the interchange at Ashland by classes was as follows:

Box and Furniture	65%
Coal	13%
Flat	13%
Refrigerators	13%
Stock	4%
Tank Cars	4%
	100%

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AVERAGE LOADING OF LUMBER

	Via Ashland	Via Portland
Feb. 1906		29 tons
Feb. 1907	27 tons	30 "

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OREGON & CALIFORNIA RAILROAD

TONNAGE & EARNINGS STATISTICS

Year End. June 30,1907	Commercial Freight Tonnage	Earnings	Company Freight Tonnage	Total Tonnage
Lumber	425425	$883080.88		
OtherForestProd	140996	300217.80		
All Other Frt	790602	2317[illegible].98		
Total All "	1357023	$3370502.59	399649 tons	1756672 tons.

* Note. Cannot show details of Company tonnage, but it consisted almost entirely of lumber, ties, and piling.

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OREGON & CALIFORNIA RAILROAD

EARNINGS & EXPENSES STATISTICS

	1907	1906
Total Earnings	$6,417,151.93	$6,666,155.46
Total Passenger Earnings	2,773,374.98	2,841,986.08
Total Freight Earnings	3,370,502.59	3,710,431.54
Percentage of Operating Expenses to Earnings	74.28	77.72
Percentage of Operating Expenses and Taxes to Earnings	76.53	79.35
Freight Earnings per Freight Train Mile	$2.94	$2.37
Operating Expenses & Taxes per Revenue Train Mile	2.04	2.08

Cannot show Operating & Taxes per Freight Train Mile.

Ratio of Operating Expenses to Earnings

	1907	1906
Main Line	69.45	76.56
Branches	101.04	84.61
Ratio of Operating Expenses and Taxes to Earnings		
Main Line	71.27	78.08
Branches	105.60	88.48

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COST OF WOOD.

(Year ending June 30th, 1907)

	Reduced to Coal Basis
Coal $4.54 per ton	$4.54
Wood $4.41 per cord	$6.01
Oil $0.70 per bbl	$2.80

Covers lines North of Ashland and does not include any transportation charge on WPA.

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CARS INTERCHANGED WITH S P C & W RY AT DALLAS, ORE.

	1905		1906		1907	
	Loads	Empties	Loads	Empties	Loads	Empties
Rec'd from S P C & W Ry.	412	50	905	84	1120	55
Delvrd to "	77	385	341	651	482	53

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CARS INTERCHANGED WITH O & S E RY COTTAGE GROVE, ORE.

	1905		1906		1907	
	Loads	Empties	Loads	Empties	Loads	Empties
Recd from O & S E Ry.	752	5	930	7	1204	21
Delvd to "	12	749	29	953	29	1151

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CARS INTERCHANGED AT MOHAWK JCT.

	1905		1906		1907	
	Loads	Empties	Loads	Empties	Loads	Empties
Recd Meacham Jc	1446	153	1064	247	1540	93
Del at "	526	948	614	964	495	1205

- 11 -

Cut of Company Mills on Wendling Branch from time of establishment to Dec. 31st, 1907:

33,034,496 feet Board Measure.

W.B.

Mill 1 established August, 1906
" 2 " November, 1906
" 3 " April, 1907

Following trains operated on Wendling Branch since completion of Bagfield-Henderson Cut-off, viz:

October 4th, 1906-- to January 15th, 1908

Passenger trains	6
Company officials	6
Freight	3
Mixed	1036
Net tons one mile	1399089
Gross "	4033741
Mileage 18 miles	

No. L-15,

Supersedes conflicting portions of Nos. 119, 132, 133, 148, 150, L-1 and L-2.

SOUTHERN PACIFIC CO.—LINES IN OREGON

FREIGHT TARIFF

BETWEEN

Portland (Park Street Station), East Portland, Portland (Jefferson Street), Oregon,

AND

Stations on Southern Pacific Co.—Lines in Oregon.

EFFECTIVE JANUARY 1, 1907.

This Tariff is subject to Western Classification and Current Rules and Regulations of this Company, Governing Transportation of Freight. Where Tariff and Classification conflict, the Tariff will govern.

Rates named herein must not be exceeded on similar shipments in same direction between intermediate points on a direct line, except as otherwise provided herein.

H. A. JONES,
Freight Traffic Manager,
SAN FRANCISCO, CAL.

W. E. COMAN,
1st Assistant General Freight Agent,
PORTLAND, ORE.

R. B. MILLER,
General Freight Agent,
PORTLAND, ORE.

W. D. SKINNER,
Assistant General Freight Agent,
PORTLAND, ORE.

Portland, Oregon, November 24, 1906.
Mailed I. C. Com., November 24, 1906.

File 3794

J. P. Co.—3000

STATION INDEX.

Stations	Index Nos.
Adams	181
Airlie	262
Albany	31
Alca	59
Amity	196
Anlauf	62
Armitage	159
Ash	213
Ashland	120
Aumsville	139
Aurora	16
Ayers	122
Ballston	250
Balm	146
Barlow	15
Baron	130
Beaverton	175
Bertha	171
Boswell Springs	69
Briedwell	246
Broadmead	248
Brooks	20
Brownsville	153
Bryant	220
Buckhardt	147
Calahan	38
Calloway	204
Canby	14
Canemah	10
Carlton	191
Car Shops	1
Central Point	114
Chemawa	21
Cipole	226
Clackamas	7
Clawson	121
Cosica	12
Coburg	158
Cochrane	258
Colestin	125
Comstock	60
Cook	221
Cornelius	183
Cornutt	86
Corvallis	206
Cottage Grove	55
Cove Orchard	189
Crabtree	145
Cranor	35
Crater Lake Junc.	115
Creswell	52
Crowley	198
Curtin	61
Dallas	257
Dayton	238
Deady	75
Derry	199
Dillard	80
Dilley	185
Divide	58
Doe Creek	88
Dole	82
Dolph	255
Donna	163
Dorrance	208
Douglas	167
Downs	132
Drain	66
Dundee Junction	237
Eugene	49
Fair Grounds	22
Fir	136
Ford	227
Forest Grove	184
Frank	233
Froman	32
Fry	33
Fulton	216
Fulton Heights	170
Gaines	144
Galbreath	222
Gales	186
Gaston	187
Gervais	19
Glendale	102
Gold Hill	112
Goltra	34
Gore	225
Goshen	51
Grants Pass	110
Green	79
Gregory	126
Halsey	42
Hare	179
Harrisburg	44
Harrison	247
Haskell	5
Herrman	224
Hillsboro	182
Holmes	245
Hubbard	17
Hugo	106
Hyland	166
Independence	200
Irving	48
Irvinville	37
Isadora	72
Jefferson	29
Jones	214
Junction City	46
Keech	28
Krewson	65
Ladd	2
La Fayette	240
Laidlaw	6
Latham	56
Lebanon	39
Leland	104
Leona	64
Lewisburg	205
Linn	152
Lowson	150
Luckiamute	260
Luper	47
Lystul	101
Macleay	137
Marcola	164
Marion	27
McCoy	197
McKee	129
McMinnville	193-242
Medford	116
Merlin	108
Middleton	231
Millersburg	30
Milwaukee	4
Monmouth	259
Mt. Angel	131
Muddy	43
Myrtle Creek	83
Natron	168
Newberg	236
New Era	13
Newton	180
Nichols	90
North Santiam	141
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Oakland	73
Oak Lawn	239
Oliver	212
Olsen	173
Oregon-Calif. Line	127
Oregon City	9
Oswego	219
Palmer	68
Paper Mill	8
Parker	201
Perrydale	252
Phoenix	118
Plainview	151
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Pratum	135
Priceboro	156
Pulp	11
Raleigh	174
Reedville	177
Reform School	25
Reuben	100
Rex	234
Rice Hill	71
Riddle	85
Rivera	218
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Roseburg	78
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Rowland	155
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Salt Creek	87
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Shattuck	172
Shaw	138
Shedd	41
Shelburn	142
Sheridan	251
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Silverton	133
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Siskiyou	124
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Skiddadle Creek	93
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Smithfield	253
South Portland	169
Southern Portland	215
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Spores	162
Springbrook	235
Springfield	160
Springfield Junction	50
Steinman	123
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St. Joseph	192-241
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Suver	202
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Turner	26
Twin Buttes	154
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Virgil	45
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Walker	53
Wapato	182
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Wellsdale	203
Wendling	166
West Fork	94
West Scio	143
West Stayton	31
Whiteson	195
Whitmore	74
Wilbur	76
Wilkins	157
Willisburg	3
Winchester	77
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Woodville	111
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Supplement No. 35 to O. R. C. No. 7

Supplement No. 35 to I.C.C. No.O-33

No. L-15

S O U T H E R N P A C I F I C C O.- L I N E S I N O R E G O N

GENERAL FREIGHT DEPARTMENT

S U P P L E M E N T NO.35

(Supplements Nos. 15, 21, 25, 30, 32, 34 and 35 in effect.)

T O

FREIGHT TARIFF NO. L-15

Refer to the above numbered Tariff, naming Class and Commodity rates between Portland and other stations on Southern Pacific Co.-Lines in Oregon, and make following addition:

ITEM NOS.	FILE NOS.	COMMODITY	FROM	TO	RATES IN CTS PER 100 LBS.	REMARKS
91	208-B	Beer in wood or glass, C.L.	Portland	✕ Oregon-California Line	50	Minimum Weight 24,000 lbs.

✕ No Agent, Freight charges must be prepaid.

ISSUED JANUARY 23, 1908. EFFECTIVE March 1, 1908.

By
R. B. MILLER,
General Freight Agent,
Portland, Oregon.

H. A. JONES
Freight Traffic Manager,
San Francisco, Calif.

W. E. COMAN,
1st Ass't General Freight Agent,
Portland, Oregon.

W. D. SKINNER,
Assistant General Freight Agent,
Portland, Oregon.

C. A. MALBOEUF,
District Freight Agent,
Portland, Oregon.

(400-H)

No. L-15

SOUTHERN PACIFIC CO.—LINES IN OREGON

SUPPLEMENT No. 34

Supersedes Nos. 28 and 31.

(Supplements Nos. 15, 21, 25, 32 and 34 in effect)

—TO—

FREIGHT TARIFF No. L-15

Refer to the above numbered Tariff, naming Class and Commodity rates between Portland and other stations on Southern Pacific Co.-Lines in Oregon, and make addition and corrections shown herein.

ISSUED JANUARY 22, 1908.

EFFECTIVE MARCH 1, 1908.
EXCEPT AS SHOWN IN REISSUED ITEMS.

By

R. B. MILLER,
General Freight Agent,
Portland, Ore.

W. E. COMAN,
1st Ass't General Freight Agent,
Portland, Ore.

H. A. JONES,
Freight Traffic Manager,
San Francisco, Cal.

W. D. SKINNER,
Assistant General Freight Agent,
Portland, Ore.

C. A. MALBOEUF,
District Freight Agent,
Portland, Ore.

Date Effective	Item Nos.	File Nos.	COMMODITY	FROM	TO	Rates in cents per 100 lbs.	REMARKS
Intrastate **Nov. 25, 1907** Interstate **Jan. 9, 1908** In Sup. 28 to I. C. C. No. O-33	69	127-B	Fuel Oil, in tank cars, C. L.	Portland ..... East Portland	Salem	10	**Estimated** weight 7.9 lbs. per gallon. Charges will be based on full carrying capacity of car; cars to be furnished by shippers in all cases, as this Company is not supplied with tank car equipment. Empty tank cars will be returned to Portland free.
Dec. 13, 1907 In Sup. 27 to I. C. C. No. O-33	70	2898	Mineral Water, in wood, iron tanks or in glass, packed, C. L.	Cottage Grove	Portland	20	**Minimum** weight 30,000 lbs.
Intrastate **Nov. 25, 1907** Interstate **Dec. 20, 1907** In Sup. 28 to I. C. C. No. O-33	72 Cancels 2, 51, 55 and 66	2348	**Canned Goods**, C. L...	Springbrook .. Newberg ..... Salem	Portland .... (Park St. Station) East Portland	10	**Minimum** weight 30,000 lbs.
		1519		Eugene	Do.	15½	
		4126		Brownsville ..	Do.	15½	
				Roseburg	Do.	25	
		294-B		Grants Pass .. Ashland	Do.	30	
Intrastate **Dec. 4, 1907** Interstate **Dec. 30, 1907** In Sup. 29 to I. C. C. No. O-33	73	2491	Beer in wood or glass C. L.	Salem	Portland	10	**Minimum** weight 30,000 lbs.
Jan. 24, 1908 In Sup. 30 to I. C. C. No. O-33	74 Cancels 71	4177	Powder, High Explosives and Fixed Ammunition, any quantity	*Between* Portland	*And* Haskell ..... Laidlaw ..... Clackamas ..	10	
Do.	75 Cancels 15	3493	Hay, Straw, Grain and Livestock	*Between* East Portland	*And* Ladd	$5.00 per Car.	
Intrastate **Jan. 6, 1908** Interstate **Feb. 6, 1908** In Sup. 31 to I. C. C. No. O-33	76	370	Wheat.....C. L.	Portland	Isadora ..... Oakland .... Ashland .... And points between	15	**Minimum** weight as per Rule 2, Page 27 of Tariff. **Expires** with close of business, March 31, 1908, unless sooner cancelled, changed or extended. After date of expiration, rates named on Grain, Flour and Mill Feed, Pages 13 and 14 of Tariff, will apply.

Date Effective	Item Nos.	File Nos.	COMMODITY	FROM	TO	Rates in cents per 100 lbs.	REMARKS
March 1, 1908	90	3588	Arsenate of Lead, in barrels.....C. L.	Portland.....	Irving..... Ashland.... And points between	33	Minimum weight 30,000 lbs. Expires with close of business April 30, 1908, unless sooner cancelled, changed or extended. After date of expiration Class Rates will apply.

Intrastate Nov. 25, 1907
Interstate Dec. 20, 1907
In Sup. 28 to I. C. C. No. O-33

Correct Rule 15, Page 25 of Tariff as amended, to read as follows:

15. **Lumber—Application.** Rates named on Lumber, Shingles, etc., Pages 12 to 19, inclusive, of Tariff, will apply on Lumber, Lath, Fence Posts, Railroad Ties, Piling, Telegraph or Telephone Poles, Crate or Box Stuff, Shooks, Shingles, Shakes, Ship Knees, Pipe Material (Wooden), Tank Material (Wooden), Water Pipe Staves (Wooden), Wooden Telegraph Cross Arms, Sawdust or Shingle Tow, Drum Stock and Berry Baskets, straight or mixed carloads. Doors, Sash, (if glazed, released), Blinds, Door and Window Frames, wired, Blocks (Base, Center, Cornice, Head) and Carpenters' Mouldings, straight or mixed carloads or mixed carloads, with Lumber, Lath, Shingles and Shakes.

File 4158.

Do.

Correct Rule 17, Page 26 of Tariff as amended, to read as follows:

17. **Lumber—Minimum Weight.** Lumber and articles taking same rates will take minimum weight provided in Rule 2, Page 27, except as follows: **Ship Knees,** straight carloads, 30,000 lbs. **Dry Sawdust or Shingle Tow,** straight carloads, in cars not exceeding 34 feet in length, 24,000 lbs. **Sash, Doors** and **Blinds, Door** and **Window Frames,** in straight or mixed carloads, 24,000 lbs. If shipped in mixed carload with Lumber, Lath, Shingles or Shakes, minimum weight will be 60,000 lbs., but not to exceed full space or weight loading capacity of car. **Shingles,** carloads of not less than full space capacity of car used, but in no case less than 24,000 lbs.

File 4158.

No. L-15

SOUTHERN PACIFIC CO.—LINES IN OREGON

SUPPLEMENT No. 32

(Supplements Nos. 13, 21, 25, 28, 30, 31 and 32 in effect.)

TO

FREIGHT TARIFF No. L-15

Refer to the above numbered Tariff, naming Class and Commodity rates between Portland and other stations on Southern Pacific Co.–Lines in Oregon, and make corrections and cancellations shown herein.

ISSUED DECEMBER 30, 1907. **EFFECTIVE JANUARY 8, 1908.**

Issued under authority of Interstate Commerce Commission Special Circular No. 5, Tariff Department.

By

R. B. MILLER,
General Freight Agent,
Portland, Ore.

H. A. JONES,
Freight Traffic Manager,
San Francisco, Cal.

W. E. COMAN,
1st Ass't General Freight Agent,
Portland, Ore.

W. D. SKINNER,
Assistant General Freight Agent,
Portland, Ore.

C. A. MALBOEUF,
District Freight Agent,
Portland, Ore.

J. P. Co.—1800

Item Nos.	File Nos.	COMMODITY	FROM	TO	Rates in cents per 100 lbs.	REMARKS
77 Cancels 69	127-B	**Fuel Oil,** in tank cars, C. L.	Portland East Portland	Barlow Salem And points between.	10	Estimated weight 7.9 lbs. per gallon. Charges will be based on full carrying capacity of car; cars to be furnished by shippers in all cases, as this Company is not supplied with tank car equipment. Empty tank cars will be returned to Portland free.
78 Cancels 72	2348	**Canned Goods** ..C. L.	Springbrook Newberg St. Joseph Dilley And points between.	Portland (Park St. Station) East Portland	10	Minimum weight 30,000 lbs.
			Barlow Salem And points between.			
	1519		Turner Eugene And points between.	Do.	15½	
			Mt. Angel Brownsville And points between.			
	4126		Goshen Roseburg And points between.	Do.	25	
	294-B		Dillard Grants Pass Ashland And points between.	Do.	30	
79 Cancels 6½	2067	**Cereals, viz:** Rye, Wheat, Buckwheat, Graham, Whole Wheat and Pancake Flour, Corn Flake, Corn Meal, Hominy, Grits, Oat Meal, Rolled Oats, Rolled Rye, Farina, Cerealine, Maina, Germea, Cracked Wheat, Vitos, Shredded Biscuit, Pearl Barley, Farinose, Malta Vita, Grape Nuts, Refined Grits and Cereal Breakfast Foods, N. O. S., in packages NOTE.—Postum Cereal will not be accepted at these rates; will take rate applying on coffee and coffee substitutes.	*Between* Portland	*And* Halsey Ashland And points between.	25	C. L., Minimum weight, 30,000 lbs.
				And Oakland Ashland And points between.	50	L. C. L.

Item Nos.	File Nos.	COMMODITY	FROM	TO	Rates in cents per 100 lbs.	REMARKS
80 Cancels 34	127	**Oil, Crude,** in tank cars..... C. L.	Portland	Tangent ..... Cottage Grove ..... And points between.	20	Estimated weight 7.5 lbs. per gallon. Charges will be based on full carrying capacity of car; cars to be furnished by shippers in all cases, as this Company is not supplied with tank car equipment. Empty tank cars will be returned to Portland free.
				Latham ..... Roseburg..... And points between.	25	
				Green ..... Ashland ..... And points between.	30	
81 Cancels 39	1223	**Beer,** in wood or glass .....C. L.	Do.	Creswell ..... Ashland ..... And points between.	35	Min. weight 24,000 lbs.
82 Cancels 49	J-1058	**Lime and Sulphur** Solution ..... C. L.	Do.	Eugene ..... Riddle ..... And points between.	20	Min. weight 30,000 lbs.
				Cornutt..... ..... Ashland ..... And points between.	26	
83 Cancels 13	845	**Furniture,** common, O. R., breakage, chafing and rubbing, or released.....C. L.	Do.	Riddle .... Ashland ..... And points between	75	Min. weight 12,000 lbs.
					66	Min. weight 20,000 lbs.
84 Cancels 20	3875	**Lime** ....C. L.	Tangent ..... Gold Hill ..... And points between	Portland	15	Min. weight 40,000 lbs.
85 Cancels 24 and 25	3608	**Mineral Water,** in wood, iron tanks or glass, packed O. R. L. or B.....	Latham .... Ashland ..... And points between.	Do.	25	C. L., Minimum weight 30,000 lbs.
			Myrtle Creek ..... Ashland ..... And points between.	Do.	60	L. C. L.
86 Cancels 28	618	**Pickles,** Vinegar, Kraut, Cider, Catsup, Apple Butter, Mince-Meat and Jellies, in barrels, kegs or kits.....C. L.	Hubbard ..... Salem..... ..... And points between.	Do.	12½	Min. weight 30,000 lbs.
87 Cancels 8½	1573 2946	**Excelsior,** in bales, ...C. L.	Turner..... Eugene..... ..... And points between. Fir .... West Stayton.....	Do.	12½	Min. weight as per Item 8 of Tariff.

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Item Nos.	File Nos.	COMMODITY	FROM	TO	Rates in cents per 100 lbs.	REMARKS
			Walker Ashland And points between.	Portland	30	
		Fruit, Green, (except Apples and Pears), C. L. or mixed carloads of Green Fruit and Vegetables.	Shedd Creswell And points between.	Do.	25	
			West Stayton Wendling Natron And points directly between.			
		Apples and Pears, carloads. Vegetables taking 5th Class, carloads or mixed carloads of 5th Class and Class "C" Vegetables in Western Classification No. 43, I. C. C. No. 1, or as amended or superseded	Walker Ashland And points between.	Do.	30	C. L. Minimum weight, 24,000 lbs.
			Halsey Creswell And points between.	Do.	25	
88 Cancels 11 as amended by 41	1066	**Vegetables,** (except Potatoes and Onions), taking class "C" in Western Classification No. 43, I. C. C. No. 1, or as amended or superseded. NOTE—For C. L. rates on Potatoes and Onions, see Page 14 of Tariff.	Grants Pass Ashland And points between.	Do.	30	
			Walker Ashland And points between	Do.	45	
		Fruit, Green and Vegetables, N. O. S. ..L. C. L.	Junction City Creswell And points between	Do.	40	
			Priceboro Wendling Natron And points between.			
		Vegetables, taking 3rd Class in Western Classification No. 43, I. C. C. No. 1, or as amended or superseded. .....L. C. L.	Walker Ashland. And points between.	Do.	45	
			Goshen Creswell	Do.	40	
			Yarnell Wendling And points between.			

Refer to clause on Title Page of Tariff and Supplements Nos. 15 and 21 reading "Rates named herein must not be exceeded on similar shipments in same direction between intermediate points on direct line," and **cancel** same, substituting therefor the following:

On traffic moving **locally** between points within the **State of Oregon,** rates named herein must not be exceeded on similar shipments in same direction between intermediate points on direct line, except as may be otherwise specifically provided. **Does not apply on interstate traffic.**

Refer to Page 28 of Tariff and under "Application of Rates" **add** the following rules:

7. Class Rates on Pages 4 to 11 and Commodity Rates on Pages 12 to 19 of Tariff or as amended, between Portland, Ore., and points on S. P. Co.—Lines in Oregon not specifically named, will be the rates applying between Portland, Ore., and the next more distant station to or from which rates are named in the Tariff.

8. Commodity Rates—Rates on commodities named herein are specific and must not be applied to analogous articles; further they are the only rates that can be used on the commodities named between points specified, even though a class rate or some combination of rates may be less.

Refer to Rule 3, Page 27 of Tariff, "Use of Class Rates," and **cancel** same.

Refer to Rule 12, Page 28 of Tariff, and **correct** same to read as follows:

12. **Returned Goods.** One-half tariff rates current at time of re-shipment will apply no shipments of goods returned to original point of shipment on account, of being defective, unsalable or refused by consignees, subject to the following rules and conditions:

a. No shipment will be returned until all charges have been paid or fully guaranteed.

b. Goods must be returned to the point from which originally shipped.

c. Way-bills must show date of original shipment, and also bear notation "Returned Shipment."

d. The established minimum charge as provided herein to prevail in all cases, no reduction to be made therefrom.

File 1785.

No L-15

SOUTHERN PACIFIC CO.—LINES IN OREGON

SUPPLEMENT No. 25

Supersedes No. 24

(Supplements Nos. 15, 21 and 25 in effect.)

—TO—

FREIGHT TARIFF No. L-15

Refer to the above numbered Tariff, naming Class and Commodity rates between Portland and other stations on Southern Pacific Co.–Lines in Oregon, and make additions, corrections and cancellations shown herein.

ISSUED OCTOBER 22, 1907. EFFECTIVE { INTRASTATE, NOV. 4, 1907. INTERSTATE, NOV. 30, 1907.

EXCEPT AS SHOWN IN REISSUED ITEMS.

By

R. B. MILLER,
General Freight Agent,
Portland, Oregon.

H. A. JONES,
Freight Traffic Manager,
San Francisco, Cal.

W. E. COMAN,
1st Ass't General Freight Agent,
Portland, Ore.

W. D. SKINNER,
Assistant General Freight Agent,
Portland, Ore.

C. A. MALBOEUF,
District Freight Agent,
Portland, Oregon.

K&S—1800

Date Effective. 1907	Item Nos.	File Nos.	COMMODITY	FROM	TO	Rates in cents per 100 lbs.	REMARKS
Nov. 7, in Sup. 22 (Cor.) to I. C. C. No. O-33.	56 Cancels 26	127	Oil, Fuel, in tank cars. C. L.	Portland .... East Portland	Forest Grove And intermediate points.	5-10c per gallon	Charges will be based on full carrying capacity of car; cars to be furnished by shippers in all cases, as this Company is not supplied with tank car equipment. Empty tank cars will be returned to Portland free.
			Cancels rate Portland to Salem.--Class rate will apply.				
Intrastate Oct. 15 Interstate Nov. 12 in Sup. 23 to I. C. C. No. O-33	58	4064	Onions	Beaverton... And intermediate points.	Portland ..... (Park St. station.)	5	C. L., Minimum weight 24,000 lbs.
						6½	Lots of 10,000 lbs. and upwards.
						8	L. C. L.
Do.	59	4064		St. Mary's .. Hillsboro.... And points between	Do.	8	C. L., Minimum weight 24,000 lbs.
						9½	Lots of 10.000 lbs. and upwards.
						11	L. C. L.
Do.	60	4064		Tualatin .... And intermediate points.	Portland ..... (Jefferson St.)	6	C. L., Minimum weight 24.000 lbs.
						7½	Lots of 10,000 lbs. and upwards.
						9	L. C. L.
Do.	61	4064		Herrman.... Sherwood ... And points between	Do.	7	C. L., Minimum weight 24,000 lbs.
						8½	Lots of 10,000 lbs. and upwards.
						10	L. C. L
Do	63	370	Wheat, C. L.	Portland	Isadora ..... Oakland ..... Ashland ..... And points between.	15	Minimum weight as per Rule 2, page 27 of Tariff. **Expires** with close of business, Dec. 31, 1907, unless sooner cancelled, changed or extended. After date of Expiration, rates named on Grain, Flour and Mill Feed, pages 13 and 14 of Tariff, will apply.
Intrastate Nov. 4 Interstate Nov. 30	64	4113	Paving Blocks, Stone, C. L.	Votaw.....	Portland ..... (Jefferson St.)	3	Minimum weight as per Rule 2, page 27 of Tariff.
Do.	66 Cancels 57	2348	Canned Goods, C. L.	Springbrook . Newberg	Portland ..... (Park St. station) East Portland..	10	Minimum weight 30,000 lbs.

Date Effective 1907	Item Nos.	File Nos.	COMMODITY	FROM	TO	Rates in cents per 100 lbs.	REMARKS
Intrastate Nov. 4, Interstate Nov. 30.	67 Cancels 22 As Amended	905	Manure, C. L. (Freight charges must be prepaid or guaranteed.)	Portland (Park St. station)	Beaverton And intermediate points.	2½	Minimum weight 24,000 lbs.
					St. Mary's Reedville	3	
					Witch Hazel Hillsboro And points between.	3½	
		4064		Portland (Jefferson St.)	Tualatin And intermediate points.	2½	
					Herrman Sherwood And points between.	3	
Do.	68 Cancels 50	R.D.-13	Cull Apples, in bulk, for manufacturing purposes.....C. L.	Springbrook Dallas And points between (Via St. Joseph.)	Portland (Park St. Station) East Portland	10	Minimum weight 30,000 lbs. Expires with close of business Dec. 31, 1907, unless sooner cancelled, changed or extended. After date of expiration class rates will govern.
				Cornelius And intermediate points.	Do.	5	
				Dilley Corvallis And points between	Do.	10	
				Woodburn And intermediate points.	Do.	7½	
				Gervais Albany And points between	Do.	10	
				Tangent Creswell And points between	Do.	12½	
				Walker Oakland And points between	Do.	16	
				Whitmore Roseburg And points between	Do.	18	
				Green Ashland And points between	Do.	20	

Date Effective 1907	
Nov. 15 in Sup. 24 to I. C. C. No. O-53.	Refer to Rule 8, page 27 of Tariff, "Diversions" and **Cancel same.** After date of cancellation, Diversion or R onsignment of Freight will be governed by Terminal Tariff No. 230, S. P. Co. I. C. C. No. 2927, supplements thereto or reissues thereof. File 2711.
Nov. 30	Refer to Rules 6, 7, 9, 10 and 11, Page 27 of Tariff, and **Cancel same,** substituting therefor the following: 14. **Terminal Charges.**—Delivery, Demurrage, Loading and Unloading, Storage and other Terminal charges, will be governed by Terminal Tariff No. 230, S. P. Co., I. C. C. No. 2927, supplements thereto or reissues thereof. File 3857.
June 21 in Sup. 7 to I. C. C. No. O-29	**STATION CHANGES.** Refer to I lex No. 205, Pages 8 and 16 of Tariff, and change *Lewisburg to read ‡* Lewisburg.
July 5 in Sup. 7 to I. C. C. No. O-29	Refer to Index No. 208, Pages 9 and 17 of Tariff, and change †*Dorrance to read †*Thorsen.
July 20 in Sup. 8 to I. C. C. No. O-29	Refer to Index No. 71, Pages 5 and 13 of Tariff, and change *Rice. Hill to read Rice Hill.
Aug. 16 in Sup. 8 to I. C. C. No. O-29	Refer to Index No. 255, Pages 10 and 11 of Tariff and eliminate *Dolph.
Do.	Refer to Index No. 254, Pages 10 and 11 of Tariff, and change ‡*Polk to read *Polk.
Oct. 15 in Sup. 10 to I. C. C. No. O-29	Refer to Index No. 164, Pages 7 and 15 of Tariff, and change *Marcola to read Marcola.
Do.	Refer to Index No. 235, Pages 9 and 11 of Tariff, and change ‡*Springbrook to read *Springbrook.

No. L-15

SOUTHERN PACIFIC CO.—LINES IN OREGON

SUPPLEMENT No. 21

Supersedes Nos. 19 and 20

(Supplements Nos. 15 and 21 in effect)

—TO—

FREIGHT TARIFF No. L-15

Refer to the above numbered Tariff, naming Class and Commodity Rates between Portland and other stations on Southern Pacific Co.–Lines in Oregon, and make additions and correction shown herein.

Rates named herein must not be exceeded on similar shipments in same direction between intermediate points on direct line.

ISSUED SEPT. 13, 1907. EFFECTIVE { INTRASTATE SEPT. 25, 1907. / INTERSTATE OCTOBER 21, 1907.

EXCEPT AS SHOWN IN REISSUED ITEMS

By

R. B. MILLER,
General Freight Agent,
Portland, Ore.

H. A. JONES,
Freight Traffic Manager,
San Francisco, Cal.

W. E. COMAN,
1st Ass't General Freight Agent,
Portland, Ore.

W. D. SKINNER,
Assistant General Freight Agent,
Portland, Ore.

C. A. MALBOEUF,
District Freight Agent,
Portland, Oregon.

K&S 1800

Date Effective. 1907	Item Nos.	FILE Nos.	COMMODITY	FROM	TO	Rates in cents per 100 lbs.	REMARKS
Intrastate Aug. 20, Interstate Sept. 16, In Sup. 16 to I. C. C. No. O-33	51	1519	**Canned Goods**, C. L.	Eugene	Portland / East Portland	15½	Minimum weight 30,000 lbs.
				Brownsville	Do.	15½	
Intrastate Sept. 25, Interstate Oct. 21.	55	4126		Roseburg	Do.	25	
				Grants Pass	Do.	30	
Intrastate Aug. 24, Interstate Sept. 19, In Sup. 17 to I. C. C. No. O-33	52	4024	**Carbolineum**, C. L. In wood or iron drums	Portland	North Santiam	12½	Minimum weight 24,000 lbs.
Intrastate Aug. 20, Interstate Sept. 16, In Sup. 16 to I. C. C. No. O-33	50	R-D 13	**Cull Apples**, in bulk, for manufacturing purposes, C. L.	Cornelius	Portland / East Portland	5	Minimum weight 30,000 lbs. **Expires** with close of business Dec. 31, 1907, unless sooner cancelled, changed or extended. After date of expiration class rates will govern.
				Woodburn	Do.	7½	
				Dallas	Do.	10	
				Corvallis	Do.	10	
				Albany	Do.	10	
				Creswell	Do.	12½	
				Oakland	Do.	16	
				Roseburg	Do.	18	
				Ashland	Do.	20	
Aug. 29, In Sup. 18 to I. C. C. No. O-33	53	289-B	**Green Fruit**, for canning purposes only, C. L. **Applicable only on State business.**	Salem	East Portland	10	Minimum weight 24,000 lbs. **Expires** with close of business Oct. 28, 1907, unless sooner cancelled, changed or extended. After date of expiration class rates will apply.
Oct. 17, In Sup. 19 to I. C. C. No. O-33	54 Cancels 23	659 971	**Milk**, Condensed, in cans, boxed, C. L.	Forest Grove / Hillsboro	Portland	4	Minimum weight 40,000 lbs.

Date Effective 1907	Refer to Exceptions to Western Classification, page 23 of Tariff, and add the following:
ıtrastate ug. 20, ıterstate ept.16, n Sup. 16 to C. C. No. O-33.	**Cans,** Tin, minimum weight as shown below.....Class C. Less than 5 gallons. / 5 gallons and over. Car of 28 ft. or less in length..... 10,000 lbs. / 8,500 lbs. Car over 28 ft. but not over 34 ft. in length 13,500 " / 11,000 " Car over 34 ft. but not over 40 ft. in length 15,500 " / 11,500 " Least charge $5.00 per car, except when class rate governed by The Western Classification makes less, in which case The Western Classification governs.
ıtrastate ept.23, ıterstate ct. 19, n Sup. 20 to C. C. No. O-33.	**Shetland Ponies,** L. C. L., regardless of Sex, Estimated weight 1,000 lbs. each.....1st Class.

No. L-15

SOUTHERN PACIFIC CO.—LINES IN OREGON

SUPPLEMENT No. 15

(Includes all current changes)

—TO—

FREIGHT TARIFF No. L-15

Refer to the above numbered Tariff naming Class and Commodity rates between Portland and other stations on Southern Pacific Co.–Lines in Oregon, and make additions, corrections and cancellations shown herein.

Rates named herein must not be exceeded on similar shipments in same direction between intermediate points on a direct line.

ISSUED JULY 26, 1907.

EFFECTIVE SEPTEMBER 3, 1907
EXCEPT AS SHOWN.

By

R. B. MILLER,
General Freight Agent,
Portland, Ore.

W. E. COMAN,
1st Ass't General Freight Agent,
Portland, Ore.

H. A. JONES,
Freight Traffic Manager,
San Francisco, Cal.

W. D. SKINNER,
Assistant General Freight Agent,
Portland, Ore.

C. A. MALBOEUF,
District Freight Agent,
Portland, Oregon.

K&S 2400

Date Effective. 1907	Item Nos.	File Nos.	COMMODITY	FROM	TO	Rates in cents per 100 lbs.	REMARKS
Feb. 23	6½ Cancels 6	2067	**Cereals, viz:** Rye, Wheat, Buckwheat, Graham, Whole Wheat and Pancake Flour, Corn Flake, Corn Meal, Hominy, Grits, Oat Meal, Rolled Oats, Rolled Rye, Farina, Cerealine, Maizea, Germea, Cracked Wheat, Vitos, Shredded Biscuit, Pearl Barley, Farinose, Malta Vita, Grape Nuts, Refined Grits and Cereal Breakfast Foods, N. O. S., in packages ..... NOTE.—Postum Cereal will not be accepted at these rates; will take rate applying on coffee and coffee substitutes.	*Between* Portland	*And* Ashland	25 50	C.L., min. weight 30,000 lbs. L. C. L. (Reissue.)
Jan. 1	8½ Cancels 8	1573 2946	**Excelsior,** in bales, ...C. L.	Eugene ..... West Stayton.	Portland	12½	Min. weight as per Item 8 in Tariff. Corrects typographical error. (Reissue.)
Do.	32	160	**Lime Rock.** C. L.....	Portland (Park St. Station).	Oswego	5	Min. weight, see Rule 2, page 27 of Tariff. (Reissue.)
Feb. 23	33	1182	**Stoves,** Stove Furniture and Stove Castings, C. L.	Salem	Portland	12½	Min. weight 20,000 lbs. (Reissue.)
Jan. 28	34	127	**Oil,** Crude, in tank cars.....C. L.	Portland.....	Cottage Grove Roseburg .... Ashland	20 25 30	Estimated weight 7.9 lbs. per gallon. Charges will be based on full carrying capacity of car; cars to be furnished by shippers in all cases, as this Company is not supplied with tank car equipment. Empty tank cars will be returned to Portland free. (Reissue.)
Feb. 23	35	1536	**Tile,** Drain .....C. L.	Portland (Jefferson St.)..	Points on Yamhill Division. Distance not over 25 miles " " " 50 " " " " 100 "	4 5 6	Min. weight 30,000 lbs. (Reissue.)
Intrastate March 27 Interstate April 20	38	3521	**Vinegar** and Cider, C.L.	Cornelius.....	East Portland.	5	Expires December 31, 1907, unless sooner cancelled, changed or extended. After date of cancellation, Class rates will govern. (Reissue.)
Intrastate April 6 Interstate May 1	39 Cancels 1 as amended	1223	**Beer,** in wood or glass .....C. L.	Portland	Ashland	35	Min. weight 24,000 lbs. (Reissue.)

Date Effective 1907	Item Nos.	File Nos.	COMMODITY	FROM	TO	Rates in cents per 100 lbs.	REMARKS
Intrastate April 6 / Interstate May 1	41 Cancels 11 as amended	1066	Fruit, Green and Vegetables	Ashland	Portland	30	C. L., minimum weight 24,000 lbs.
						45	L. C. L. (Reissue.)
				Creswell	..... Do.....	25	C. L., minimum weight 24,000 lbs.
				Natron			
				Wendling		40	L. C. L. (Reissue.)
Intrastate July 2 / Interstate July 29	44	160	Scrap Iron.....C. L.	Portland (Park St. Station)	Oswego	5	Min. weight as per Rule 2, Page 27 of Tariff. (Reissue.)
Aug. 10	45	294-B	Cans, Tin .....C. L.	Portland.	Ashland	34	Min. weight 16,000 lbs. Expires with close of business, October 10, 1907, unless sooner cancelled, changed or extended. After date of expiration, Class rates will govern. (Reissue.)
Sept. 3	47	160	Pig Iron.....C. L.	Portland (Park St. Station)	Oswego	5	Min. weight as per Rule 2, Page 27 of Tariff.
Sept. 10	48 Cancels 46	4022	Rails, Iron or Steel, and Fastenings .....C. L.	Portland	Medford	50	Min. weight 60,000 lbs., unless marked capacity of car used is less, in which case Min. C. L. weight will be the marked capacity of car. Expires with close of business, October 10, 1907, unless sooner cancelled, changed or extended. After date of expiration Class rates will govern. (Reissue.)
Sept. 3	49 Cancels 40	J-1058	Lime and Sulphur Solution .....C. L.	.....Do.....	Riddle.....	20	Min. weight 30,000 lbs.
					Ashland	26	

Effective { *Intrastate, March 27, 1907.* / *Interstate, April 20, 1907.*

Refer to pages 13 and 14 of Tariff, and correct rates on Potatoes and Onions, carloads, to read as follows:

Between Portland or East Portland and..

- Stations from Round Prairie to Ashland, incl., Index Nos. 81 to 120, incl..... 25 cts. per 100 lbs.
- Stations from Clawson to Siskiyou, incl., Index Nos. 121 to 124, incl..... 27 cts. per 100 lbs.
- Stations from Colestin to Oregon-California Line, incl., Index Nos. 125 to 127, incl. ... 30 cts. per 100 lbs.

File1066. (Reissue.)

Effective Jan. 1, 1907.

Refer to page 11 of Tariff and correct 3rd Class rate between Portland (Jefferson St.) and Dundee Junction, Dayton, Oak Lawn and La Fayette to read 15 cents, account typographical error. (Reissue.)

Refer to page 25 of Tariff and correct Special Rules 10 and 11 to read as follows in order to make application more clear:

10. **Charge for Double-Deck Cars.**—Sheep or Goats in double-deck cars will take same rates as Horses or Mules. Hogs, or mixed shipments of Hogs and Sheep, in double-deck cars will not be accepted for transportation under this Tariff. File 2310. (Reissue.)

11. **Mixed Loading.**—Mixed carloads of Horses, Cattle, Hogs, Sheep or Goats in single-deck cars, will be transported and charged for at the carload rate on the stock taking the highest rate in the car. Shippers to put in partition at their own expense, separating the different kinds of stock, and to assume all risk of loss or injury caused by partition breaking down, or mixing of stock while in transit. (Reissue.)

Effective Feb. 23, 1907.

Refer to page 28 of Tariff, under Application of Rates, and make following correction and addition:

1. Unless otherwise specified, **Portland,** as used in this Tariff, refers to Portland proper (Park St. Station) and is point of interchange with connecting lines. (Reissue.)

6. Rates named on pages 9, 10, 17 and 18 of Tariff, between Portland (Park St. Station) and Yamhill Division points, will not apply on **Local Business,** except when consignors or shippers specifically request Park St. Station shipment or delivery. (Reissue.)

Effective { *Intrastate, April 30, 1907.*
{ *Interstate, May 24, 1907.*

CORRECT Rule 15, page 25 of Tariff, to read as follows:

15. **Lumber—Application.** Rates named on Lumber, Shingles, etc., pages 12 to 19, inclusive, of Tariff, will apply on Lumber, Lath, Fence Posts, Railroad Ties, Piling, Telegraph or Telephone Poles, Crate or Box Stuff, Shooks, Shingles, Shakes, Ship Knees, Pipe Material (Wooden), Tank Material (Wooden), Water Pipe Staves (Wooden), Wooden Telegraph Cross Arms, Sawdust, Drum Stock and Berry Baskets, straight or mixed carloads. Doors, Sash (if glazed, released), Blinds, Door and Window Frames, wired, Blocks (Base, Center, Cornice, Head) and Carpenters' Mouldings, straight or mixed carloads, or mixed carloads with Lumber, Lath, Shingles and Shakes. (Reissue.)

CORRECT Rule 17, page 26 of Tariff, to read as follows:

17. **Lumber—Minimum Weight.** Lumber and articles taking same rates will take minimum weight provided in Rule 2, page 27, except as follows: **Ship Knees,** straight carloads, 30,000 lbs. **Dry Sawdust,** straight carloads, in cars not exceeding 34 feet in length, 24,000 lbs. **Sash, Doors** and **Blinds, Door** and **Window Frames,** in straight or mixed carloads, 24,000 lbs. If shipped in mixed carload with Lumber, Lath, Shingles or Shakes, minimum weight will be 60,000 lbs., but not to exceed full space or weight loading capacity of car. **Shingles,** carloads of not less than full space capacity of car used, but in no case less than 24,000 lbs. (Reissue.)

STATION CHANGES.

Date Effective 1907

Feb. 23 { Correct Coalca, Index No. 12, pages 4 and 12 of Tariff to read *Coalca. (Reissue.)
{ Correct Harrison, Index No. 247, pages 11 and 19 of Tariff, to read *Harrison. (Reissue.)

Apr. 30 { Correct *Marion, Index No. 27, pages 4 and 12 of Tariff, to read Marion. (Reissue.)
{ Correct St. Joseph, Index No. 192, pages 8 and 16 of Tariff, to read, *St. Joseph. (Reissue.)

June 21 —Correct *Lewisburg, Index No. 205, Pages 8 and 16 of Tariff, to read ‡*Lewisburg.

July 5 —Correct †*Dorrance, Index No. 208, pages 9, 10, 17 and 18 of Tariff, to read †*Thorsen.

March 2 —Add †*Hofer, Index No. 17A, pages 4 and 12 of Tariff, at rates provided for Woodburn.

April 27 —Add †*Bona, Index No. 214A, pages 5 and 13 of Tariff, at rates provided for *Dole.

June 19 —Add *Ryckman, Index No. 160A, pages 5 and 13 of Tariff, at rates provided for Drain.

CANCELLATIONS.

Effective Feb. 23, 1907.

Cancel rate of 8 cents per 100 lbs. on Scrap Boiler Tubes and Iron Pipe, C. L., from Portland (Park St. Station) to Dallas, as shown in Item No. 17.

After date of cancellation, class rates will apply. (Reissue.)

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EAST SIDE DIVISION

	INDEX NOS.	MILES FROM PORTLAND	BETWEEN PORTLAND (Park St. Station) OR EAST PORTLAND AND	CLASS RATES In cents per 100 pounds									
				1	2	3	4	5	A	B	C	D	E
MAIN LINE	1	3	Car Shops	12	10	8	7	7	7	6	6	3	3
	2	4	†*Ladd	14	12	9	8	8	8	7	6	4	4
	3	5	*Willsburg										
	4	7	*Milwaukee	14	12	10	9	8	8	7	6	4	4
	5	10	†*Haskell	15	13	11	9	8	8	8	6	4	4
	6	10.5	*Laidlaw										
	7	11	Clackamas	16	14	11	9	8	8	8	6	4	4
	8	14	*Paper Mill	17	15	12	9	8	8	8	6	4	4
	9	15	**Oregon City**	18	15	12	9	8	8	8	6	5	4
	10	16	‡*Canemah	19	15	12	9	8	8	8	6	5	5
	11	18	†*Pulp										
	12	20	Coalca										
	13	21	*New Era	19	15	12	9	8	8	8	6	5	5
	14	24	Canby	21	17	13	10	9	9	9	7	5	5
	15	26	Barlow	22	19	16	13	12	12	10	9	5	5
	16	28	Aurora	23	19	16	14	12	12	10	9	6	5
	17	32	Hubbard	25	21	18	15	13	13	11	10	6	6
	18	36	**Woodburn**	25	22	19	16	14	14	11	10	7	6
	19	39	Gervais	25	22	19	17	15	15	12	10	7	6
	20	44	Brooks	25	22	19	17	15	15	13	10	7	7
	21	48	Chemawa	25	22	19	17	15	15	13	10	8	7
	22	50	*Fair Grounds										
	23	51	†*Tile Works										
	24	53	**Salem**										
	25	58	‡*Reform School	26	24	21	20	18	17	15	13	9	8
	26	60	Turner										
	27	67	*Marion	28	25	22	20	18	17	16	13	10	9
	28	68	*Keech	28	25	22	20	18	17	17	13	10	9
	29	71	Jefferson										
	30	75	*Millersburg	28	25	22	20	18	17	17	13	11	10
	31	80	**Albany**										
LEBANON BRANCH	32	83	*Froman	29	27	24	23	21	21	18	15	11	10
	33	85	*Fry	29	27	24	23	21	21	19	16	11	10
	34	87	*Goltra	29	27	24	23	21	21	19	16	12	10
	35	88	‡*Cranor										
	36	89	Tallman (via Woodburn-Springfield Branch only)										
	37	90	*Irvinville	32	29	26	25	23	23	20	16	12	10
	38	92	*Calahan										
	39	93	**Lebanon**										
MAIN LINE	40	86	Tangent	29	27	24	23	21	21	19	16	12	10
	41	92	Shedd	32	29	26	25	23	23	20	16	12	10
	42	97	Halsey	35	32	29	27	25	25	21	17	13	11
	43	103	*Muddy	36	34	31	28	27	27	22	18	13	11
	44	106	Harrisburg	40	37	33	30	28	28	22	18	13	11
	45	106.3	*Virgil	40	37	33	30	28	28	23	19	14	11

EAST SIDE DIVISION—Continued.

MAIN LINE

INDEX NOS.	MILES FROM PORTLAND	BETWEEN PORTLAND (Park St. Station) OR EAST PORTLAND AND	CLASS RATES In cents per 100 pounds									
			1	2	3	4	5	A	B	C	D	E
46	110	**Junction City**	40	37	33	30	28	28	23	19	14	11
47	116	‡*Luper	45	41	38	34	32	30	24	19	14	12
48	118	Irving										
49	123	**Eugene**	46	42	39	36	33	31	25	20	15	12
50	126	Springfield Junction	48	44	41	37	34	32	26	20	15	12
51	130	Goshen										
52	135	Creswell	50	45	42	38	35	33	27	21	15	12
53	140	*Walker	52	47	43	40	36	34	27	21	16	13
54	142	Saginaw	53	48	44	41	37	35	28	21	16	13
55	144	**Cottage Grove**	54	48	44	41	37	35	28	21	16	13
56	146	*Latham	55	49	45	42	38	35	28	21	16	13
57	147	*Veatch	56	50	46	42	39	36	29	22	16	13
58	149	*Divide										
59	151	†*Alca	57	51	47	43	40	37	29	22	16	13
60	153	Comstock										
61	155	*Curtin	58	52	48	44	41	38	30	22	17	14
62	156	*Anlauf	58	52	49	45	41	38	30	22	17	14
63	158	†*Safely										
64	159	*Leona										
65	160	*Krewson										
66	162	**Drain**	59	53	49	46	42	38	31	22	17	14
67	162.5	†*Skelly	60	53	49	46	42	39	31	23	17	14
68	163	*Palmer										
69	164	‡*Boswell Springs										
70	167	Yoncalla	61	55	51	47	43	39	31	23	17	14
71	173	*Rice Hill	63	56	52	48	44	40	32	23	17	14
72	175	*Isadora	63	56	52	49	45	41	33	23	18	15
73	181	**Oakland**	67	59	55	50	46	42	34	24	18	15
74	183	†*Whitmore	68	60	56	51	47	43	35	24	18	15
75	187	†*Deady	69	61	56	52	48	44	35	24	18	15
76	189	Wilbur										
77	193	*Winchester	70	62	57	53	48	44	35	24	18	15
78	198	**Roseburg**	72	64	59	55	50	45	36	25	18	15
79	203	*Green	74	65	60	56	51	46	37	25	19	16
80	209	Dillard	76	67	61	57	52	48	38	25	19	16
81	213	*Round Prairie	78	68	63	58	53	48	38	26	19	16
82	216	*Dole	79	69	64	59	54	49	39	26	19	16
83	220	Myrtle Creek	80	70	65	60	55	50	39	26	20	17
84	222	†*Weaver	82	71	66	61	56	51	40	27	20	17
85	226	Riddle	83	72	67	62	56	51	40	27	20	17
86	230	*Cornutt	83	73	67	63	58	53	42	27	20	17
87	235	‡*Salt Creek	86	76	70	65	59	53	42	27	20	17
88	235	*Doe Creek										
89	237	‡*Smith Creek										
90	239	*Nichols										
91	241	‡*Table Creek	89	78	72	68	61	55	44	28	21	18

EAST SIDE DIVISION—Continued.

	INDEX NOS.	MILES FROM PORTLAND	BETWEEN PORTLAND (Park St. Station) OR EAST PORTLAND AND	CLASS RATES In cents per 100 pounds									
				1	2	3	4	5	A	B	C	D	E
MAIN LINE	92	243	‡*Union Creek	89	78	72	68	61	55	44	28	21	18
	93	246	‡*Siddadle Creek	90	79	72	68	61	56	44	28	21	18
	94	249	*West Fork										
	95	252	‡*Tunnel No. 3	92	81	74	69	62	57	45	28	21	18
	96	254	‡* " " 4										
	97	255	‡* " " 5	93	82	75	70	63	58	46	29	22	19
	98	256	‡* " " 6	94	82	76	70	63	58	46	29	22	19
	99	257	‡*Tunnel No. 7	94	82	76	70	63	58	46	29	22	19
	100	259	*Reuben										
	101	261	†*Lystul	95	83	77	71	64	58	46	29	22	19
	102	263	*Glendale										
	103	269	Wolf Cre	97	85	78	72	65	59	47	29	22	19
	104	276	Leland	100	88	81	75	67	61	48	30	22	19
	105	280	‡*Tunnel N 9	101	88	82	77	68	62	49	30	22	19
	106	283	*Hugo	102	89	82	77	68	62	49	30	22	19
	107	285	*Three Pines	104	90	84	77	70	63	50	30	23	20
	108	288	Merlin										
	109	296.7	†*Sugar Pine Door and Lumber Co	107	93	86	80	72	65	51	31	23	20
	110	297	**Grants Pass**										
	111	306	Woodville	111	96	89	82	74	67	52	31	24	21
	112	313	Gold Hill	113	98	90	84	76	68	54	32	24	21
	113	320	*Tolo	115	100	92	86	77	70	55	33	25	22
	114	325	Central Point	116	102	93	87	78	70	55	33	25	22
	115	328	†*Crater Lake Junction	118	103	95	88	79	71	56	33	25	22
	116	329	**Medford**										
	117	331	*Voorhies	120	104	96	89	80	72	57	34	26	23
	118	333	*Phoenix										
	119	336	Talent	122	105	98	90	81	73	57	34	26	23
	120	341	**Ashland**	123	107	99	91	82	74	58	34	26	23
	121	346	*Clawson	125	108	101	93	83	75	58	34	26	23
	122	347	*Ayres	126	109	102	93	83	75	59	34	26	23
	123	351	*Steinman	127	110	103	94	84	76	60	34	26	23
	124	358	Siskiyou	129	112	105	95	86	78	61	35	26	23
	125	361	‡*Colestin	131	113	106	96	87	78	61	35	27	24
	126	363	*Gregory	132	114	106	97	88	79	62	35	27	25
	127	367	***Oregon-California Line**	133	115	107	97	88	79	62	35	27	25
Woodburn-Springfield Branch	128	39	*Townsend	27	23	20	17	14	14	12	10	7	6
	129	40	*McKee	28	24	20	17	15	15	12	11	7	6
	130	41	*Baron	28	24	20	17	15	15	12	11	7	7
	131	42	Mt. Angel	29	25	21	18	15	15	13	11	7	7
	132	44	*Downs	29	25	21	18	16	16	13	11	7	7
	133	46	**Silverton**	30	26	22	19	16	16	13	11	8	7
	134	51	*Switzerland	31	28	23	20	17	17	14	12	8	7
	135	52	*Pratum	31	28	24	20	18	18	14	12	8	8
	136	53	*Fir	31	29	25	21	18	18	15	13	9	8

EAST SIDE DIVISION—Continued.

	INDEX NOS.	MILES FROM PORTLAND	BETWEEN PORTLAND (Park St. Station) OR EAST PORTLAND AND	CLASS RATES In cents per 100 pounds									
				1	2	3	4	•5	A	B	C	D	E
WOODBURN-SPRINGFIELD BRANCH	137	56	*Macleay	31	29	25	21	18	18	15	13	9	8
	138	59	*Shaw	32	29	25	22	19	19	15	13	9	8
	139	61	Aumsville	32	29	25	22	20	19	15	13	9	8
	140	65	West Stayton	32	29	25	24	21	20	16	14	10	9
	141	67	*North Santiam										
	142	69	*Shelburn	32	29	26	24	21	20	16	14	10	9
	143	71	**West Scio**	32	29	26	25	22	21	17	14	10	9
	144	75	†*Gaines										
	145	76	*Crabtree										
	146	79	†*Balm	32	29	26	25	23	22	18	15	11	10
	147	80	†*Burkhardt	32	29	26	25	23	23	18	15	11	10
	148	81	*Spicer	32	29	26	25	23	23	18	15	11	10
	149	83	**Tallman**	32	29	26	25	23	23	19	15	11	10
	150	86	*Lowson	32	29	26	25	23	23	19	16	11	10
	151	90	*Plainview	35	32	29	27	25	25	19	16	12	10
	152	94	‡*Linn	35	32	29	27	25	25	20	17	12	11
	153	96	**Brownsville**	36	34	31	28	27	26	20	17	13	11
	154	100	*Twin Buttes	40	37	33	30	28	27	21	18	13	11
	155	104	*Rowland	40	37	33	30	28	28	22	18	14	11
	156	108	*Priceboro	43	39	35	32	30	28	23	18	14	11
	157	112	*Wilkins	45	40	37	34	31	29	23	19	14	12
	158	116	**Coburg**	46	41	37	35	31	30	24	19	14	12
	159	119	*Armitage	46	41	38	35	32	30	24	19	14	12
	160	123	**Springfield**	46	42	39	36	33	31	25	20	15	12
Mohawk Branch	161	129	*Yarnell	48	44	41	37	34	32	26	20	15	12
	162	131	*Spores										
	163	133	*Donna	50	45	42	38	35	33	27	21	15	12
	164	136	*Marcola										
	165	137	*Hyland										
	166	140	**Wendling**	52	47	43	40	36	34	27	21	16	13
Portland Yard Limits	167	125	‡*Douglas	47	43	40	37	34	32	26	20	15	12
	168	129	*Natron	48	43	40	37	34	32	26	20	15	12

* No Agent—Freight must be prepaid.

WEST SIDE DIVISION.

INDEX NOS.	MILES FROM PORTLAND	BETWEEN PORTLAND (Park St. Station) OR EAST PORTLAND AND	CLASS RATES In cents per 100 lbs.									
			1	2	3	4	5	A	B	C	D	E
169	3	†*South Portland	12	10	8	7	7	7	6	6	3	3
170	4	‡*Fulton Heights	14	12	10	8	8	8	7	7	4	4
171	6	*Bertha										
172	8	*Shattuck	15	13	11	8	8	8	7	7	4	4
173	9	†*Olsen	15	14	11	8	8	8	7	7	4	4
174	10	‡*Raleigh										
175	11	**Beaverton**	15	14	11	8	8	8	8	7	4	4
176	13	*St. Mary's	15	14	12	8	8	8	8	8	4	4
177	16	**Reedville**	15	14	13	8	8	8	8	8	5	4
178	17	‡*Witch Hazel										
179	18	*Hare										
180	19	*Newton	15	14	13	8	8	8	8	8	5	5
181	20	†*Adams										
182	21	**Hillsboro**										
183	24	Cornelius	16	15	13	8	8	8	8	8	5	5
184	26	**Forest Grove**	18	16	14	8	8	8	8	8	6	5
185	28	Dilley	19	16	14	12	11	10	10	9	6	6
186	30	*Gales	20	17	14	12	11	10	10	9	6	6
187	32	Gaston	21	18	14	12	11	10	10	9	6	6
188	34	*Wapato	22	18	14	12	11	10	10	9	7	6
189	37	*Cove Orchard	24	19	15	12	11	10	10	9	7	6
190	39	North Yamhill										
191	43	Carlton	24	19	15	12	11	10	10	9	7	7
192	47	**St. Joseph**	24	19	15	12	11	10	10	9	8	7
193	50	**McMinnville**										
194	51	†*Seitters	28	25	21	18	16	16	14	12	9	8
195	54	**Whiteson**										
196	57	Amity	28	25	21	18	17	16	15	13	9	8
197	62	McCoy	28	25	22	19	18	17	16	13	9	8
198	67	*Crowley	28	25	22	20	18	17	16	13	10	9
199	70	Derry	28	25	22	20	18	17	17	13	10	9
200	76	**Independence**										
201	81	*Parker										
202	83	*Suver										
203	86	*Wellsdale	28	25	22	20	18	17	17	13	11	10
204	89	*Calloway										
205	91	*Lewisburg										
206	97	**Corvallis**										

WEST SIDE DIVISION

YAMHILL DIVISION—Via St. Joseph.

INDEX NOS.	MILES FROM PORTLAND	BETWEEN PORTLAND (Park St. Station) OR EAST PORTLAND (Via St. Joseph and Whiteson) AND	CLASS RATES In cents per 100 pounds									
			1	2	3	4	5	A	B	C	D	E
207	84	Portland (Jefferson St.)										
208	82.5	†*Dorrance										
209	82.4	†*Wrenn										
210	82.4	†*Zilpha										
211	82.3	†*Zimmerman										
212	82.3	†*Oliver										
213	82	†*Ash										
214	81.8	†*Jones										
215	81.4	‡*Southern Portland										
216	81	‡*Fulton										
217	79.3	†*Riverdale										
218	78.8	‡*Rivera										
219	77	**Oswego**										
220	74	*Bryant										
221	73	*Cook										
222	72	*Galbreath										
223	71	Tualatin										
224	70	*Herrman	27	25	21	18	16	16	13	12	9	8
225	69.4	*Gore										
226	69	*Cipole										
227	68.2	*Ford										
228	68	*Stewart										
229	67.3	*Rock Creek										
230	67	**Sherwood**										
231	65	*Middleton										
232	64	*Votaw										
233	63.6	*Frank										
234	62	‡*Rex										
235	60	‡*Springbrook										
236	58	**Newberg**										
237	55	Dundee Junction										
238	52	Dayton										
239	51	*Oak Lawn										
240	49	LaFayette										
241	47	St. Joseph										
242	50	McMinnville. (Via West Side Division Only.)										
243	51	Seitters										
244	54	Whiteson										
245	55	†*Holmes	32	28	24	20	18	18	15	14	10	9
246	58	*Briedwell										
247	58.4	*Harrison	32	29	25	21	19	19	16	14	10	9
248	60.5	*Broadmead										
249	61	*Sheridan Junction	33	29	25	21	19	19	16	14	10	9
250	64	Ballston	33	29	25	21	20	20	16	14	10	10
251	68	**Sheridan**	33	30	26	22	21	20	17	15	11	10

YAMHILL DIVISION

YAMHILL DIVISION—Via St. Joseph—Continued.

	INDEX NOS.	MILES FROM PORTLAND	BETWEEN PORTLAND (Park Street Station) OR EAST PORTLAND (Via St. Joseph and Whiteson) AND	CLASS RATES In cents per 100 pounds									
				1	2	3	4	5	A	B	C	D	E
YAMHILL DIVISION	252	63	Perrydale	33	29	25	21	20	19	16	14	10	10
	253	68	*Smithfield	33	30	26	22	21	20	17	15	11	10
	254	70.5	‡*Polk	33	30	26	22	21	21	17	15	11	10
	255	71	*Dolph	34	30	26	23	22	22	18	15	11	10
	256	73	*Thurston										
	257	74	**Dallas**										
	258	78	‡*Cochrane	34	31	27	23	23	22	18	16	12	11
	259	81	**Monmouth**	34	31	27	24	24	23	19	16	12	11
	260	85	*Luckiamute	35	31	27	24	24	23	20	17	13	12
	261	87	*Simpson	35	32	28	24	24	24	20	17	13	12
	262	90	**Airlie**	35	32	28	25	24	24	20	17	13	12

YAMHILL DIVISION—Portland (Jefferson St.)

	INDEX NOS.	MILES FROM PORTLAND (Jefferson St.)	BETWEEN PORTLAND (Jefferson St.) AND	CLASS RATES In cents per 100 pounds									
				1	2	3	4	5	A	B	C	D	E
YAMHILL DIVISION	208	1.5	†*Dorrance	5	5	5	5	5	5	5	5	3	3
	209	1.6	†*Wrenn										
	210	1.6	†*Zilpha										
	211	1.7	‡*Zimmerman										
	212	1.7	†*Oliver										
	213	2	†*Ash										
	214	2.2	†*Jones										
	215	2.6	‡*Southern Portland										
	216	3	‡*Fulton										
	217	4.7	†*Riverdale										
	218	5.2	‡*Rivera										
	219	7	**Oswego**	5	5	5	5	5	5	5	5	4	3
	220	10	*Bryant	15	13	10	9	8	8	7	6	4	4
	221	11	*Cook										
	222	12	*Galbreath	16	14	11	9	8	8	7	6	4	4
	223	13	Tualatin	16	14	12	10	9	9	8	7	4	4
	224	14	*Herrman										
	225	14.6	*Gore	17	15	12	10	9	9	8	7	5	4
	226	15	*Cipole										
	227	15.8	*Ford										
	228	16	*Stewart	18	16	13	11	9	9	8	7	5	4
	229	16.7	*Rock Creek	18	16	13	11	9	9	8	7	5	4
	230	17	**Sherwood**										
	231	19	*Middleton	19	16	14	11	9	9	9	7	5	4
	232	20	*Votaw	20	17	14	11	9	9	9	7	5	4

YAMHILL DIVISION—Portland (Jefferson St.)—Continued.

YAMHILL DIVISION

INDEX NOS.	MILES FROM PORTLAND (Jefferson St.)	BETWEEN PORTLAND (Jefferson St.) AND	CLASS RATES In cents per 100 pounds									
			1	2	3	4	5	A	B	C	D	E
233	20.4	*Frank	20	17	14	11	9	9	9	7	5	5
234	22	†*Rex	20	17	14	11	9	9	9	7	5	5
235	24	‡*Springbrook	21	17	14	11	9	9	9	7	6	5
236	26	**Newberg**										
237	29	Dundee Junction	21	18	16	12	10	10	10	8	6	6
238	32	Dayton										
239	33	*Oak Lawn										
240	35	LaFayette										
241	37	St. Joseph	24	19	15	12	11	10	10	9	8	7
242	40	McMinnville										
243	41	†*Seitters	28	25	20	17	15	15	12	11	8	7
244	44	**Whiteson**										
245	45	†*Holmes	28	25	21	18	16	16	13	11	8	7
246	48	*Briedwell	28	25	21	18	16	16	13	12	8	7
247	48.4	Harrison	28	25	22	19	17	17	14	12	8	7
248	50.6	*Broadmead										
249	51	*Sheridan Junction										
250	54	Ballston	30	26	22	19	18	18	14	12	8	8
251	58	**Sheridan**	30	27	23	20	19	18	15	13	9	8
252	53	Perrydale	28	25	22	19	18	17	14	12	8	8
253	58	*Smithfield	28	25	22	20	18	17	15	13	9	8
254	60.5	‡*Polk										
255	61	*Dolph	28	25	22	20	18	17	16	13	9	8
256	63	*Thurston										
257	64	**Dallas**										
258	68	‡*Cochrane	28	25	22	20	18	17	16	13	10	9
259	71	**Monmouth**	28	25	22	20	18	17	17	13	10	9
260	75	*Luckiamute	32	28	24	22	22	21	18	15	11	10
261	77	*Simpson	32	29	25	23	22	22	18	15	11	10
262	80	**Airlie**										

EAST SIDE DIVISION.

	INDEX NOS.	MILES FROM PORTLAND.	BETWEEN PORTLAND (Park St. Station.) OR EAST PORTLAND AND	RATES IN CENTS PER 100 LBS. Grain, Flour and Mill Feed. Carloads. See Rule 1, Page 24.	Potatoes and Onions, Straight or Mixed Carloads, Minimum weight 30,000 lbs.	Hay and Straw, Straight or Mixed Carloads. Minimum weight, See Rule 2, Page 24.	Salt, Carloads. Minimum weight 30,000 lbs.	Lumber, Shingles, Etc. Carloads. See Rules 13 to 18, Pages 25 and 26.	LIVE STOCK. In dollars per 34 ft. single-deck car. See Rules 3 to 14, Pages 24 and 25. Horses and Mules.	Cattle, Hogs, Sheep and Goats.
MAIN LINE	1	3	Car Shops	5	6	3	6	3	8.96	8.96
	2	4	†*Ladd	5	6	4	6	4	11.20	8.96
	3	5	*Willsburg							
	4	7	*Milwaukee							
	5	10	†*Haskell							
	6	10.5	*Laidlaw	5	6	4	6	4	12.32	11.20
	7	11	Clackamas							
	8	14	*Paper Mill							
	9	15	**Oregon City**	5	6	4	6	4	13.44	12.32
	10	16	‡**Canemah							
	11	18	†**Pulp							
	12	20	Coalca	7½	6	4	6	4	15.68	13.44
	13	21	*New Era							
	14	24	Canby	7½	7	4	7	4	16.80	14.56
	15	26	Barlow	7½	9	4	9	4	16.80	14.56
	16	28	Aurora	7½	9	5	9	5	17.92	15.68
	17	32	Hubbard	7½	10	5	10	5	17.92	15.68
	18	36	**Woodburn**	7½	10	5	10	5	19.04	16.80
	19	39	Gervais	7½	10	5	10	5	20.16	16.80
	20	44	Brooks	7½	10	6	10	6	21.28	17.92
	21	48	Chemawa							
	22	50.7	*Fair Grounds	7½	10	6	10	6	22.40	19.04
	23	51	†**Tile Works							
	24	53	**Salem**	9	10	7	10	7	22.40	20.16
	25	58	‡*Reform School							
	26	60	Turner	9	13	7	13	7	24.64	21.28
	27	67	*Marion	10	13	8	13	8	25.76	22.40
	28	68	*Keech	10	13	8	13	8	26.88	23.52
	29	71	Jefferson							
	30	75	*Millersburg	10	13	9	13	9	28.00	23.52
	31	80	**Albany**	10	13	9	13	9	29.12	24.64
Lebanon Branch	32	83	*Froman	10	15	9	15	9	30.24	25.76
	33	85	*Fry	10	16	9	16	9	30.24	25.76
	34	87	*Goltra	10	16	9	16	9	31.36	25.76
	35	88	‡**Cranor							
	36	89	Tallman (via Woodburn Springfield Branch only)							
	37	90	*Irvinville	10	16	9	16	9	31.36	26.88
	38	92	*Calahan	10	16	9	16	9	32.48	26.88
	39	93	**Lebanon**							
Main Line	40	86	Tangent	10	16	9	16	9	30.24	22.40
	41	92	Shedd	11	16	9	16	9	32.48	26.88

EAST SIDE DIVISION—Continued.

MAIN LINE

INDEX NOS.	MILES FROM PORTLAND.	BETWEEN PORTLAND (Park St. Station) OR EAST PORTLAND AND	RATES IN CENTS PER 100 LBS. Grain, Flour and Mill Feed. Carloads, See Rule 1, Page 24.	Potatoes and Onions, Straight or Mixed Carloads, Minimum weight 30,000 lbs.	Hay and Straw, Straight or Mixed Carloads. Minimum weight, See Rule 2, Page 24.	Salt, Carloads. Minimum weight 30,000 lbs.	Lumber, Shingles, Etc. Carloads. See Rules 15 to 18, Pages 25 and 26.	LIVE STOCK. In dollars per 34 ft. single deck car. See Rules 3 to 14, Pages 24 and 25. Horses and Mules.	Cattle, Hogs, Sheep and Goats.
42	97	Halsey	11	17	10	17	10	33.60	28.00
43	103	*Muddy	11	18	10	18	10	33.60	28.00
44	106	Harrisburg	12	18	10	18	10	34.72	29.12
45	106.3	*Virgil	12	19	10	19	10	35.84	30.24
46	110	**Junction City**							
47	116	†*Luper	12	19	11	19	11	38.08	32.48
48	118	Irving							
49	123	**Eugene**	12	20	11	20	11	39.20	33.60
50	126	*Springfield Junction	12	20	11	20	11	40.32	34.72
51	130	Goshen							
52	135	Creswell	12	21	11	21	11	41.44	35.84
53	140	*Walker	12	21	12	21	12	42.56	36.96
54	142	Saginaw	13	21	12	21	12	43.68	38.08
55	144	**Cottage Grove**							
56	146	*Latham							
57	147	†*Veatch	14	22	12	22	12	44.80	39.20
58	149	*Divide							
59	151	*Alca	14	22	12	22	12	45.92	40.32
60	153	Comstock							
61	155	†*Curtin	14	22	13	22	13	47.04	41.44
62	156	*Anlauf							
63	158	*Safely							
64	159	*Leona							
65	160	*Krewson							
66	162	**Drain**	15	22	13	22	13	47.04	41.44
67	162.5	†*Skelly	15	23	13	23	13	48.16	42.56
68	163	*Palmer							
69	164	‡*Boswell Springs							
70	167	Yoncalla	15	23	13	23	13	49.28	43.68
71	173	*Rice Hill	15	23	13	23	13	50.40	44.80
72	175	*Isadora	16	23	14	23	14	50.40	44.80
73	181	**Oakland**	16	24	14	24	14	52.64	47.04
74	183	†*Whitmore	17	24	14	24	14	53.76	48.16
75	187	†*Deady							
76	189	Wilbur							
77	193	*Winchester	17	24	14	24	14	54.88	49.28
78	198	**Roseburg**	18	25	14	25	14	57.12	50.40
79	203	*Green	18	25	15	25	15	57.12	51.52
80	209	Dillard	18	25	15	25	15	58.24	52.64
81	213	*Round Prairie	18	26	15	26	15	59.36	53.76
82	216	*Dole							
83	220	Myrtle Creek	19	26	16	26	16	60.48	54.88
84	222	†*Weaver	19	27	16	27	16	61.60	56.00

* No Agent—Freight must be prepaid.

EAST SIDE DIVISION—Continued.

MAIN LINE

INDEX NOS.	MILES FROM PORTLAND.	BETWEEN PORTLAND (Park St. Station.) OR EAST PORTLAND AND	RATES IN CENTS PER 100 LBS.					LIVE STOCK. In dollars per 34 ft. single-deck car. See Rules 3 to 14, Pages 24 and 25.	
			Grain, Flour and Mill Feed. Carloads, See Rule 1, Page 24.	Potatoes and Onions, Straight or Mixed Carloads, Minimum weight 30,000 lbs.	Hay and Straw, Straight or Mixed Carloads. Minimum weight, See Rule 2, Page 24.	Salt, Carloads. Minimum weight 30,000 lbs.	Lumber, Shingles, Etc Carloads. See Rules 15 to 18, Pages 25 and 26.	Horses and Mules.	Cattle, Hogs, Sheep and Goats.
85	226	Riddle	19	27	16	27	16	61.60	56.00
86	230	*Cornutt	19	27	16	27	16	62.72	57.12
87	235	‡*Salt Creek	19	27	16	27	16	64.96	59.36
88	236	*Doe Creek							
89	237	‡*Smith Creek	19	27	16	27	16	64.96	59.36
90	239	*Nichols							
91	241	‡*Table Creek	19	28	17	28	17	67.20	61.60
92	243	‡*Union Creek							
93	246	‡*Skiddadle Creek	19	28	17	28	17	67.20	61.60
94	249	*West Fork	20	28	17	28	17	67.20	61.60
95	252	‡*Tunnel No. 3	20	28	17	28	17	68.32	62.72
96	254	‡* " " 4							
97	255	‡* " " 5	20	29	18	29	18	69.44	63.84
98	256	‡* " " 6							
99	257	‡* " " 7							
100	259	*Reuben	20	29	18	29	18	70.56	64.96
101	261	†*Lystul							
102	263	**Glendale**							
103	269	Wolf Creek	20	29	18	29	18	71.68	66.08
104	276	Leland	20	30	18	30	18	72.80	67.20
105	280	‡*Tunnel No. 9	20	30	18	30	18	73.92	68.32
106	283	*Hugo	20	30	18	30	18	75.04	69.44
107	285	*Three Pines	20	30	19	30	19	76.16	70.56
108	288	Merlin							
109	296.7	†*Sugar Pine Door and Lumber Co.	20	31	19	31	19	77.28	70.56
100	297	**Grants Pass**							
111	306	Woodville	20	31	20	31	20	79.52	70.56
112	313	Gold Hill	20	32	20	32	20	80.64	70.56
113	320	*Tolo	20	33	21	33	21	81.76	70.56
114	325	Central Point							
115	328	†*Crater Lake Junction	20	33	21	33	21	82.88	70.56
116	329	**Medford**							
117	331	*Voorhies	20	34	22	34	22	82.88	70.56
118	333	*Phœnix							
119	336	Talent							
120	341	**Ashland**	20	34	22	34	22	84.00	70.56
121	346	*Clawson	20	34	22	34	22	84.00	71.68
122	347	*Ayres							
123	351	*Steinman							
124	358	Siskiyou	20	35	22	35	22	85.12	71.68
125	361	‡*Colestin	20	35	23	35	23	85.12	71.68
126	363	*Gregory	20	35	24	35	24	85.12	71.68
127	367	***Oregon-California Line**	20	35	24	35	24	86.24	71.68

‡ No Agent. Freight must be prepaid.

EAST SIDE DIVISION—Continued.

	INDEX NOS.	MILES FROM PORTLAND.	BETWEEN PORTLAND (Park St. Station) OR EAST PORTLAND AND	RATES IN CENTS PER 100 LBS. Grain, Flour and Mill Feed. Carloads. See Rule 1, Page 24.	Potatoes and Onions. Straight or Mixed Carloads. Minimum weight 30,000 lbs.	Hay and Straw. Straight or Mixed Carloads. Minimum weight; See Rule 2, Page 24.	Salt. Carloads. Minimum weight 30,000 lbs.	Lumber, Shingles, Etc. Carloads. See Rules 15 to 18, Pages 25 and 26.	LIVE STOCK. In dollars per 34 ft. single-deck car. See Rules 3 to 14, Pages 24 and 25. Horses and Mules.	Cattle, Hogs, Sheep and Goats.
WOODBURN-SPRINGFIELD BRANCH.	128	39	*Townsend	7½	10	5	10	5	20.16	17.92
	129	40	McKee							
	130	41	*Baron	7½	11	5	11	5	20.16	17.92
	131	42	Mt. Angel	8	11	6	11	6	20.16	17.92
	132	44	*Downs	8	11	6	11	6	21.28	17.92
	133	46	**Silverton**	8	11	6	11	6	21.28	19.04
	134	51	*Switzerland	9	12	6	12	6	22.40	19.04
	135	52	*Pratum	9	12	7	12	7	22.40	20.16
	136	53	*Fir	9	13	7	13	7	23.52	20.16
	137	56	*Macleay							
	138	59	*Shaw	9	13	7	13	7	24.64	21.28
	139	61	Aumsville	9	13	7	13	7	24.64	21.28
	140	65	West Stayton	10	14	8	14	8	25.76	22.40
	141	67	*North Santiam							
	142	69	*Shelburn	10	14	8	14	8	26.88	22.40
	143	71	**West Scio**							
	144	75	†*Gaines	10	15	9	15	9	28.00	23.52
	145	76	*Crabtree							
	146	79	†*Balm	10	15	9	15	9	29.12	24.64
	147	80	†*Burkhardt							
	148	81	*Spicer	10	15	9	15	9	30.24	24.64
	149	83	**Tallman**	10	15	9	15	9	30.24	24.64
	150	86	*Lowson	10	16	9	16	9	30.24	25.76
	151	90	*Plainview	10	17	9	16	9	31.36	26.88
	152	94	‡*Linn	11	17	10	16	10	32.48	26.88
	153	96	**Brownsville**	11	17	10	17	10	32.48	26.88
	154	100	*Twin Buttes	11	18	10	18	10	33.60	28.00
	155	104	*Rowland	11	18	10	18	10	34.72	29.12
	156	108	*Priceboro	11	18	10	18	10	35.84	30.24
	157	112	*Wilkins	12	19	11	19	11	35.84	31.36
	158	116	**Coburg**	12	19	11	19	11	36.96	31.36
	159	119	*Armitage	12	19	11	19	11	38.08	32.48
	160	123	**Springfield**	12	20	11	20	11	39.20	33.60
Mohawk Branch	161	129	*Yarnell	12	20	13	20	13	40.32	34.72
	162	131	*Spores							
	163	133	*Donna	12	21	13	21	13	41.44	35.84
	164	136	*Marcola							
	165	137	*Hyland	12	21	13	21	13	42.56	36.96
	166	140	**Wendling**							
Natron-Lyall Br.	167	125	‡*Douglas	12	20	11	20	11	40.32	34.72
	168	129	*Natron							

WEST SIDE DIVISION

INDEX NOS.	MILES FROM PORTLAND.	BETWEEN PORTLAND (Park St. Station) OR EAST PORTLAND AND	RATES IN CENTS PER 100 LBS. Grain, Flour and Mill Feed. Carloads. See Rule 1, Page 24.	Potatoes and Onions. Straight or Mixed Carloads. Minimum weight 30,000 lbs.	Hay and Straw. Straight or Mixed Carloads. Minimum weight, See Rule 2, Page 24.	Salt. Carloads. Minimum weight 30,000 lbs.	Lumber, Shingles, Etc. Carloads. See Rules 15 to 18, Pages 25 and 26.	LIVE STOCK. In dollars per 34 ft. single-deck car. See Rules 3 to 14, Pages 24 and 25. Horses and Mules.	Cattle, Hogs, Sheep and Goats.
169	3	†*South Portland	4	6	3	6	3	8.96	8.96
170	4	‡*Fulton Heights	4	7	4	7	4	12.32	11.20
171	6	*Bertha							
172	8	*Shattuck							
173	9	†*Olsen	4	7	4	7	4	13.44	12.32
174	10	‡*Raleigh							
175	11	**Beaverton**							
176	13	*St. Mary's	4	8	4	8	4	13.44	12.32
177	16	**Reedville**	4	8	4	8	4	14.56	12.32
178	17	‡*Witch Hazel	4½	8	4	8	4	14.56	13.44
179	18	*Hare	5	8	4	8	4	15.68	13.44
180	19	*Newton							
181	20	†*Adams'							
182	21	**Hillsboro**	5½	8	4	8	4	15.68	14.56
183	24	Cornelius	6	8	4	8	4	16.80	14.56
184	26	**Forest Grove**	6½	8	5	8	5	16.80	15.68
185	28	Dilley	7	9	5	9	5	17.92	15.68
186	30	*Gales	7½	9	5	9	5	17.92	15.68
187	32	Gaston							
188	34	*Wapato	7½	9	5	9	5	19.04	16.80
189	37	*Cove Orchard	7½	9	5	9	5	20.16	16.80
190	39	North Yamhill							
191	43	Carlton	7½	9	6	9	6	21.28	17.92
192	47	**St. Joseph**	7½	9	6	9	6	21.28	19.04
193	50	**McMinnville**	7½	9	6	9	6	22.40	19.04
194	51	†*Seitters	7½	12	7	12	7	23.52	20.16
195	54	**Whiteson**							
196	57	Amity	7½	13	7	13	7	23.52	20.16
197	62	McCoy	7½	13	7	13	7	24.64	21.28
198	67	*Crowley	8	13	8	13	8	25.76	22.40
199	70	Derry	9	13	8	13	8	26.88	22.40
200	76	**Independence**	10	13	9	13	9	28.00	23.52
201	81	*Parker	10	13	9	13	9	29.12	24.64
202	83	*Suver	10	13	9	13	9	30.24	25.76
203	86	*Wellsdale							
204	89	*Calloway	10	13	9	13	9	31.36	26.88
205	91	*Lewisburg							
206	97	**Corvallis**	10	13	9	13	9	33.60	28.00

WEST SIDE DIVISION

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YAMHILL DIVISION—Via St. Joseph.

INDEX NOS.	MILES FROM PORTLAND.	BETWEEN PORTLAND (Park St. Station) OR EAST PORTLAND (Via St. Joseph and Whiteson) AND	RATES IN CENTS PER 100 LBS.					LIVE STOCK. In dollars per 34 ft. single-deck car. See Rules 3 to 14, Page 24 and 25.	
			Grain, Flour and Mill Feed. Carloads, See Rule 1, Page 24.	Potatoes and Onions, Straight or Mixed Carloads, Minimum weight 30,000 lbs.	Hay and Straw, Straight or Mixed Carloads. Minimum weight, See Rule 2, Page 24.	Salt, Carloads. Minimum weight 30,000 lbs.	Lumber, Shingles, Etc. Carloads. See Rules 15 to 18, Pages 25 and 26.	Horses and Mules.	Cattle, Hogs, Sheep and Goats.
YAMHILL DIVISION									
207	84	Portland (Jefferson St.)							
208	82.5	†*Dorrance							
209	82.4	†*Wrenn							
210	82.4	†*Zilpha							
211	82.3	†*Zimmerman							
212	82.3	†*Oliver							
213	82	†*Ash							
214	81.8	†*Jones							
215	81.4	‡*Southern Portland							
216	81	‡*Fulton							
217	79.3	†*Riverdale							
218	78.8	‡*Rivera							
219	77	**Oswego**							
220	74	*Bryant							
221	73	*Cook							
222	72	*Galbreath							
223	71	Tualatin							
224	70	*Herrman							
225	69.4	*Gore	7½	12	7½	12	7½	23.52	21.28
226	69	*Cipole							
227	68.2	*Ford							
228	68	*Stewart							
229	67.3	*Rock Creek							
230	67	**Sherwood**							
231	65	*Middleton							
232	64	*Votaw							
233	63.6	*Frank							
234	62	‡*Rex							
235	60	‡*Springbrook							
236	58	**Newberg**							
237	55	Dundee Junction							
238	52	Dayton							
239	51	*Oak Lawn							
240	49	La Fayette							
241	47	St. Joseph	Via West Side Division Only.						
242	50	McMinnville							
243	51	†*Seitters							
244	54	Whiteson							
245	55	†*Holmes	7½	14	8	14	8	25.76	22.40
246	58	*Briedwell	7½	14	8	14	8	25.76	23.52
247	58.4	*Harrison	7½	14	8	14	8	26.88	23.52
248	60.5	*Broadmead							
249	61	*Sheridan Junction							

YAMHILL DIVISION—Via St. Joseph—Continued.

	INDEX NOS.	MILES FROM PORTLAND.	BETWEEN PORTLAND (Park St. Station) OR EAST PORTLAND (Via St. Joseph and Whiteson) AND	RATES IN CENTS PER 100 LBS. Grain, Flour and Mill Feed. Carloads, See Rule 1, Page 24.	Potatoes and Onions, Straight or Mixed Carloads, Minimum weight 30,000 lbs.	Hay and Straw, Straight or Mixed Carloads. Minimum weight, See Rule 2, Page 24.	Salt, Carloads. Minimum weight 30,000 lbs.	Lumber, Shingles, Etc. Carloads. See Rules 13 to 18, Pages 25 and 26.	LIVE STOCK. In dollars per 34 ft. single-deck car. See Rules 3 to 14, Page 24 and 25. Horses and Mules.	Cattle, Hogs, Sheep and Goats.
YAMHILL DIVISION	250	64	Ballston	7½	14	8	14	8	28.00	24.64
	251	68	**Sheridan**	7½	15	9	15	9	28.00	24.64
	252	63	Perrydale	7½	14	9	14	9	26.88	24.64
	253	68	*Smithfield	8	15	9	15	9	28.00	24.64
	254	70.5	‡*Polk	9	15	9	15	9	29.12	25.76
	255	71	*Dolph							
	256	73	*Thurston							
	257	74	**Dallas**	9	15	9	15	9	30.24	25.76
	258	78	‡*Cochrane	10	16	10	16	10	30.24	26.88
	259	81	**Monmouth**	10	16	10	16	10	31.36	26.88
	260	85	‡*Luckiamute	10	17	11	17	11	32.48	28.00
	261	87	*Simpson							
	262	90	**Airlie**	10	17	11	17	11	33.60	29.12

YAMHILL DIVISION—Portland (Jefferson St.)

	INDEX NOS.	MILES FROM PORTLAND. (Jefferson St.)	BETWEEN PORTLAND (Jefferson St.) AND	RATES IN CENTS PER 100 LBS. Grain, Flour and Mill Feed. Carloads. See Rule 1, Page 24.	Potatoes and Onions. Straight or Mixed Carloads. Minimum weight 30,000 lbs.	Hay and Straw. Straight or Mixed Carloads. Minimum weight, See Rule 2, Page 24.	Salt. Carloads. Minimum weight 30 000 lbs.	Lumber, Shingles, Etc. Carloads. See Rules 15 to 18, Pages 25 and 26.	LIVE STOCK. In dollars per 34-ft. single-deck car. See Rules 3 to 14 Pages 24 and 25. Horses and Mules.	Cattle, Hogs, Sheep and Goats.
YAMHILL DIVISION	208	1.5	†*Dorrance							
	209	1.6	†*Wrenn							
	210	1.6	†*Zilpha							
	211	1.7	†*Zimmerman							
	212	1.7	†*Oliver							
	213	2	†*Ash	5	5	3	5	3	8.96	8.96
	214	2.2	†*Jones							
	215	2.6	‡*Southern Portland							
	216	3	‡*Fulton							
	217	4.7	†*Riverdale							
	218	5.2	‡*Rivera							
	219	7	**Oswego**	5	5	3	5	3	12.32	11.20
	220	10	*Bryant	6	6	4	6	4	13.44	12.32
	221	11	*Cook							
	222	12	*Galbreath							
	223	13	Tualatin	7	7	4	7	4	13.44	12.32
	224	14	*Herrman							

YAMHILL DIVISION—Portland (Jefferson St.)—Continued.

YAMHILL DIVISION

INDEX NOS.	MILES FROM PORTLAND. (Jefferson St.)	BETWEEN PORTLAND (Jefferson St.) AND	RATES IN CENTS PER 100 LBS. Grain, Flour and Mill Feed. Carloads. See Rule 1, Page 24.	Potatoes and Onions. Straight or Mixed Carloads. Minimum weight 30,000 lbs.	Hay and Straw. Straight or Mixed Carloads. Minimum weight. See Rule 2, Page 24.	Salt. Carloads. Minimum weight 30,000 lbs.	Lumber, Shingles, Etc. Carloads. See Rules 13 to 18, Pages 25 and 26.	LIVE STOCK. In dollars per 34 ft. single-deck car. See Rules 3 to 14, Pages 24 and 25. Horses and Mules.	Cattle, Hogs, Sheep and Goats.
225	14.6	*Gore	7	7	4	7	4	14.56	13.44
226	15.	*Cipole							
227	15.8	*Ford							
228	16	*Stewart	7	7	4	7	4	14.56	13.44
229	16	*Rock Creek							
230	17	**Sherwood**							
231	19	*Middleton	7	7	4	7	4	15.68	13.44
232	20	*Votaw	7½	7	4	7	4	15.68	14.56
233	20.4	*Frank							
234	22	†*Rex	7½	7	4	7	4	15.68	14.56
235	24	‡*Springbrook	7½	7	5	7	5	16.80	14.56
236	26	**Newberg**							
237	29	Dundee Junction	7½	8	5	8	5	17.92	15.68
238	32	Dayton							
239	33	*Oak Lawn	7½	8	5	8	5	19.04	16.80
240	35	La Fayette							
241	37	St. Joseph	7½	9	6	9	6	20.16	17.92
242	40	McMinnville							
243	41	Seitters	7½	11	6	11	6	20.16	17.92
244	44	**Whiteson**							
245	45	†*Holmes	7½	11	6	11	6	21.28	17.92
246	48	*Briedwell	7½	12	6	12	6	21.28	19.04
247	48.4	Harrison	7½	12	6	12	6	22.40	19.04
248	50.5	*Broadmead							
249	51	*Sheridan Junction							
250	54	Ballston	7½	12	6	12	6	23.52	20.16
251	58	**Sheridan**	7½	13	7	13	7	23.52	20.16
252	53	Perrydale	7½	12	7	12	7	22.40	20.16
253	58	*Smithfield	8	13	7	13	7	23.52	20.16
254	60.5	‡*Polk	9	13	7	13	7	24.64	21.28
255	61	*Dolph							
256	63	*Thurston							
257	64	**Dallas**	9	13	7	13	7	25.76	21.28
258	68	‡*Cochrane	10	13	8	13	8	25.76	22.40
259	71	**Monmouth**	10	13	8	13	8	26.88	22.40
260	75	*Luckiamute	10	15	9	15	9	28.00	23.52
261	77	*Simpson							
262	80	**Airlie**	10	15	9	15	9	29.12	24.64

SPECIAL COMMODITY RATES.

Item No.	File No.	COMMODITY	FROM	TO	Rates in cents per 100 lbs.	REMARKS
1	3782	**Beer**, in wood or glass ..... C. L.	Portland	Medford	35	Min. weight 24,000 lbs.
2	289	**Canned Goods** ... C. L.	Salem	Portland	10	Min. weight 30,000 lbs.
3	659 971	**Cans**, Tin ..... C. L.	Portland	Forest Grove Hillsboro	3¾	Min. weight 20,000 lbs.
4	2070	**Cars**, Empty, Tank, returned	All points on Lines in Oregon south of East Portland	Portland	Free	
5	306	Cars, refrigerator, iced by this Company, and moved at its own convenience, for loading with green fruit, vegetables or other perishable freight	Portland	Points not exceeding 150 miles in distance	Free	
		CEREALS.				
6	2067	Graham, Rye or Whole Wheat Flour, Corn Flake, Corn Meal, Hominy, Grits, Oat Meal, Rolled Oats, Rolled Rye, Buckwheat Flour, Pancake Flour, Farina, Cerealine, Maizea, Germea, Cracked Wheat, Vitos, Shredded Biscuit, Pearl Barley, Farinose, Malta Vita, Grape Nuts, Refined Grits and Cereal Breakfast Foods, N. O. S., in packages ..... NOTE—Postum Cereal will not be accepted at these rates; will take rate applying on coffee and coffee substitutes.	BETWEEN Portland	AND Ashland	25 50	C.L., Min. weight 30,000 lbs. L. C. L.
7	160	Coke ..... C. L.	Portland (Park St. Station)	Oswego	$1.00 per ton of 2,240 lbs.	Min. weight full space loading capacity of car, but not less than 24,000 lbs. **Applies from and to points named only.**
8	1573 2946	**Excelsior**, in bales ..... C. L.	Eugene West Stayton	Do	12½	Min. weight, when loaded in cars 34 ft. long 15,000 lbs " " 34 " " 18,000 " " " 36 " " 19,000 " " " 40 " " 24,000 "
		FREIGHT.				
9	77	Coal, Cotton, Machinery, Soap and Soap Stock ..... C. L.	Portland	Willsburg	2½	Min. charge, $6.00 per car.

SPECIAL COMMODITY RATES—Continued

Item Nos.	File No.	COMMODITY	FROM	TO	Rates in cents per 100 lbs.	REMARKS
		FREIGHT—Continued.				
10	77	Wool, straight carloads or mixed carloads with commodities named in Item No. 9	BETWEEN Portland	AND Willsburg	2½	Min. charge $6.00 per car.
			Ashland	Portland	40	C. L., minimum weight 26,000 lbs.
					60	L. C. L.
			Riddle	Do.	30	C. L., minimum weight 26,000 lbs.
					50	L. C. L.
11	1066	Fruit, Green and Vegetables	Creswell Natron Wendling Lebanon Corvallis Airlie Sheridan	Do.	25	C. L., minimum weight 26,000 lbs.
					40	L. C. L.
			Airlie	Portland (Jeff. St.)	25	C. L., minimum weight 26,000 lbs.
			Sheridan	Do.	40	L. C. L.
12	1573	**Furniture** C. L.	Ash	Portland (Park St. Station)	5	Min. charge $10.00 per car.
13	845	Furniture, common, O. K., breakage, chafing and rubbing, or released C. L.	Portland	Ashland	75	Min. weight 12,000 lbs.
					66	Min. weight 20,000 lbs.
14	194	**Handles** and Tent Pins, Wooden, in packages, in lots of one ton or more	Woodburn	Portland	10	
15	3493	**Hay** C. L.	East Portland	Ladd	$5.00 per car.	
16	160	**Iron**, Pig or Scrap Straight carloads	Portland (Jeff. St.)	Oswego	2½	Min. weight as per Rule 2, Page 27.
		JUNK.				
17	146	Scrap Boiler Tubes and Iron Pipe C. L.	Portland (Park St. Station)	Dallas	8	Min. weight as per Rule 2, Page 27.
18	2731	**Kaolin** C. L.	Ashland	Portland	12½	Min. weight as per Rule 2, Page 27.

SPECIAL COMMODITY RATES—Continued.

Item Nos.	File No.	COMMODITY	FROM	TO	Rates in cents per 100 lbs.	REMARKS
19	630	**Lime,** Cement, Resin, Alum and Sulphur.....C. L.	Portland	Lebanon	13	Min. weight 40,000 lbs.
20	3875	Lime.....C. L.	Gold Hill	Portland	15	Min. weight 40,000 lbs.
		LUMBER.				
21	659 971	Box Shooks.....C. L.	Portland	Forest Grove Hillsboro	2½	Min. weight as per Rule 2, Page 27.
22	905	**Manure**.....C L (Freight charges must be prepaid or guaranteed.)	Portland (Jeff. St.)	Sherwood	3	Min. charge $9.00 per car.
			Portland	Reedville	3	
23	659 971	**Milk,** Condensed, in cans, boxed.....C. L.	Forest Grove Hillsboro	Portland	4	Min. weight 30,000 lbs.
24	3608	**Mineral Water,** in wood, iron tanks or glass, packed O. R. L. or B...C. L.	Ashland	Portland	25	Min. weight 30,000 lbs.
25	3608	.....Do. L. C. L.	.....Do	.....Do	60	
26	127	**Oil,** FUEL, in tank cars.....C. L.	Portland East Portland	Salem Forest Grove	5/10 c Per Gallon 5/10 c Per Gallon	Charges will be based on full carrying capacity of car; cars to be furnished by shippers in all cases, as this Company is not supplied with tank car equipment. Empty tank cars will be returned to Portland free.
27	630	**Paper,** Wrapping, in bundles or rolls.....C. L.	Lebanon	Portland	10	Min. weight as per Rule 2, Page 27.
28	618	**Pickles,** Vinegar, Kraut, Cider, Catsup, Apple Butter, Mince-Meat and Jellies, in barrels, kegs or kits.....C. L.	Salem	Portland	12½	Min. weight 30,000 lbs.
29	160	**Pipe,** Cast Iron....C. L.	Oswego	Portland (Park St. Station) Portland (Jefferson St.)	5 2½	Min. weight as per Rule 2, Page 27.
30	1536	**Tile,** Drain.....C. L.	Portland	Points distant not over 25 miles Points distant not over 50 miles Points distant not over 100 miles Points distant not over 140 miles Points distant not over 170 miles	4 5 6 7 7½	Min. weight 30,000 lbs.
31	1514	**Vinegar** and Cider.....C. L.	Eugene	Portland	17½	Min. weight as per Rule 2, Page 27.

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EXCEPTIONS TO WESTERN CLASSIFICATION.

Bones—Carloads, minimum weight 30,000 lbs. ..... Class E

Brick—Less than carload quantities will not be handled, unless shipped in packages.

Coal and Coke—Straight carloads, minimum weight, see Rule 2, Page 27.....Class E

Fruit—Dried, carloads, minimum weight 30,000 lbs. ..... 4th Class

Lime and Sulphur—Carloads, minimum weight 30,000 lbs. [File 672].....Class C

Lime, Plaster, Cement and Stucco—Carloads, minimum weight 30,000 lbs.....Class C

Live Stock, shipped under Current Live Stock Contract: (See also Rules 3 to 14, Pages 24 and 25).

Bucks, loose, estimated weight 400 lbs. each ..... 1st Class

Calves (under 1 year old), Hogs, Sheep and Goats may be shipped loose at ratings provided in Western Classification for same animals crated.

Lambs and Kids, loose, estimated weight 200 lbs. each .....1st Class

Lambs and Kids, crated, actual weight.....1½ times 1st Class

Live Stock, when shipped at carrier's risk, at actual weight, but not less than estimated weight provided in Western Classification .....Double 1st Class

Pipe, Sheet Iron or Steel, Spiral Seam or Straight Seam, O. R. B. or Rel., carloads, minimum weight 20,000 lbs. [File 1705.] ..... 5th Class

Do., L. C. L., over 12 inches in diameter.....1½ times 1st Class

Do., L. C. L., 12 inches or less in diameter..... 3d Class

***Powder** and High Explosives, O. R., carloads, minimum weight 24,000 lbs.....1st Class

*Do., L. C. L. .....Double 1st Class

NOTE.—For further Exceptions to Classification, see Freight Tariff No. L-8, I. C. C. No. O 24, amendments thereto or subsequent issues thereof.

*Shipments of Powder and High Explosives will be accepted only as governed by Rules and Regulations provided in Joint Circular, General Freight Department No. F-106, General Superintendent's No. 42, I. C. C, No. O-43, amendments thereto or subsequent issues thereof.

SPECIAL RULES.

Governing Transportation of Grain, Hay, Live Stock and Lumber.

1. **Application of Grain Rates**—Application of rates and minimum weights on Grain, Flour, Mill Feed, etc., will be as follows:

Section	COMMODITY	RATE AS
A	Wheat, Rye, Oats, Barley, Buckwheat, Grain Screenings, Corn (Common or Kaffir, Dried), not including Pop Corn, in straight or mixed carloads	Grain, minimum weight as per Rule 2, Page 27.
B	Mill Feed, Bran, Bran Meal, Chopped Corn, Cracked Corn, Cracked Wheat, Crushed Wheat, Grits, Hominy Feed, Middlings, Oat Hulls, Shorts, Brewers' Grits, Brewers' Meal, Oil Cake, Oil Cake Meal; in straight or mixed carloads	Mill Feed, minimum weight 30,000 lbs.
C	Flour, manufactured from Wheat, Corn, Buckwheat, Potatoes and Rye, in straight or mixed carloads	Flour, minimum weight 30,000 lbs.
D	Cheat and Vetch Seed, in straight or mixed carloads, or with Grain, Flour or Feed	Grain rates and minimum weights.
E	Flax Seed, straight carloads, or with Grain, Flour or Feed	Do.
F	Malt, straight carloads	Do.

NOTE.—Where tariff provides a mixed carload rating on "Grain, Flour and Mill Feed," they, or all of the articles specified in sections A, B and C, may be loaded in the same car and charges to be assessed on basis of such rate and minimum weight governing. Where specific rates are published on "Wheat," "Oats," "Barley," or other kinds of grain specifically named, it is not the intention to consider such special rates as "Grain Rates." The term "Grain Rates" is intended to apply only where the term "Grain" is used. File 2067.

2. **Hay and Straw,** baled and pressed, O. R. of fire, straight or mixed carloads; minimum weight as follows:

When loaded in Box Cars (except ventilated Fruit or Refrigerator Cars, 34 feet in length and under).

Charge for not less than 14,000 lbs., for 28-foot car and under.
Charge for not less than 17,000 lbs., for 34-foot car and under.
Charge for not less than 19,000 lbs., for 36-foot car and under.
Charge for not less than 20,000 lbs., for 40-foot car and under.

When in ventilated Fruit or Refrigerator Cars, 34 feet in length and under, charge for not less than 16,000 lbs.

3. **Live Stock.** Rates named on Live Stock are subject to Rules and Conditions of Current Live Stock Contract, and apply only on ordinary stock cars not exceeding 34 feet in length, internal measurement. File 2318.

4. **Charge for Longer Cars.** Rates on cars exceeding 34 feet in length, internal measurement, will be the following per cents of the rate for cars 34 feet in length:

Over 34 feet, to and including 35 feet .....103 per cent.
Over 35 feet, to and including 36 feet 6 inches .....106 per cent.
Over 36 feet 6 inches, to and including 37 feet .....109 per cent.

For each additional foot, or fraction thereof, in length, an additional charge of 3 per cent. will be made.

5. **Live Stock Equipment** in this Company's service consists largely of 34 and 36 ft. cars, and the carrier reserves the right to accept orders for cars of shorter lengths and place same at its own convenience, when such equipment is available.

SPECIAL RULES—Continued.

Governing Transportation of Grain, Hay, Live Stock and Lumber.

6. **Larger Cars Furnished.** When cars of larger size than ordered by shipper are furnished at the Company's convenience, the rate charged shall be on the basis of length of car ordered and required to contain the load, but in no event, less than for cars of 34 feet, inside measurement.

7. **Smaller Cars Furnished.** Where shipper orders two or more cars of certain length for loading Live Stock, the Railroad Company reserves the right to furnish, at its own convenience, a greater number of cars of shorter length, to equalize loading space called for, and to charge therefor on the basis applicable upon the number and size of cars originally called for, or required to contain the shipment loaded.

8. **Single-Deck in Place of Double-Deck Cars.** Owing to the limited number of double-deck stock cars in service on Southern Pacific Co. Lines in Oregon, this carrier reserves the right to furnish at its own convenience, two single-deck stock cars in the place of each double-deck car ordered by shipper, and to charge therefor on the basis of double-deck cars so ordered.

9. **Double-Deck Cars** for shipment of Sheep or Goats must be decked by shippers, or at their expense, and without injury to cars, in case the proper equipment cannot be furnished promptly. No liability will be assumed by this Company for damage to Sheep or Goats in double-deck cars, caused by decks breaking down.

10. **Charge for Double-Deck Cars.** Sheep or Goats in double-deck cars will take same rates as Horses or Mules. Hogs in double-deck cars will not be accepted for transportation under this Tariff.

11. **Mixed Loading.** Mixed carloads of Horses, Cattle, Hogs, Sheep or Goats will be transported and charged at the carload rate on the stock taking the highest rate in the car. Shippers to put in partition at their own expense, separating the different kinds of stock, and to assume all risk of loss or injury caused by partition breaking down, or the mixing of stock while in transit.

12. **Stations Without Stock Yards.** From stations where there are no stock yards or loading chutes, the rates shown herein will apply only where shippers furnish the necessary appliances for loading stock, which must be done at their own expense or risk.

13. **Care of Stock.** The owners of Live Stock must care for shipments while in transit at their own expense and risk, and the expense of caring, feeding and watering must be paid on delivery at destination by owner or consignee in addition to the rates named herein.

14. **Confinement of Stock.** Live Stock carried over this Company's lines will be subject to law pertaining to confinement of live stock, commonly known as the "28-hour law," as covered by S. P. Co. Circular No. F-100, I. C. C. No. O-30, amendments thereto or subsequent issues thereof.

15. **Lumber—Application.** Rates named on Lumber, Shingles, etc., pages 12 to 19, inclusive, of Tariff, will apply on Lumber, Lath, Fence Posts, Railroad Ties, Piling, Telegraph or Telephone Poles, Crate or Box Stuff, Shooks, Shingles, Shakes, Pipe Material (Wooden), Tank Material (Wooden), Water Pipe Staves (Wooden), Wooden Telegraph Cross Arms, Sawdust, Drum Stock and Berry Baskets, straight or mixed carloads. Doors, Sash (if glazed, released), Blinds, Door and Window Frames, wired, Blocks (Base, Center, Cornice, Head) and Carpenters' Mouldings, straight or mixed carloads or mixed carloads with Lumber, Lath, Shingles and Shakes.

16. **Lumber—Loading.** Lumber, Lath, Shingles and freight of similar character, when loaded on flat cars must be staked, **and the stakes securely cleated across the top of the load,** so as to securely hold the freight in place and prevent spreading or falling off the car in transit. Before receipting for such freight, agents must see that this requirement is complied with.

SPECIAL RULES—Continued.

Governing Transportation of Grain, Hay, Live Stock and Lumber.

17. **Lumber—Minimum Weight.** Lumber and articles taking same rates will take minimum weight provided in Rule 2, Page 27, except as follows: **Dry Sawdust,** straight carloads, in cars not exceeding 34 feet in length, 24,000 lbs. **Sash, Doors** and **Blinds, Door** and **Window Frames,** in straight or mixed carloads, 24,000 lbs. If shipped in mixed carload with Lumber, Lath, Shingle or Shakes, minimum weight will be 60,000 lbs., but not to exceed full space or weight loading capacity of car. **Shingles,** carloads, will be subject to the following minimum weights: Cars to be loaded to full space capacity, and when so loaded, charges will be based on not less than 24,000 lbs.

18. **Dunnage Allowance on Forest Products.** An allowance of 500 lbs. per car will be made for weight of Standard Strips and Stakes or Supports used on carload shipments of Forest Products loaded on flat or gondola cars, but in no case must less than the minimum C. L. weight specified in Tariff be charged for each car.

In way-billing Forest Products under this rule, agents will show the actual weight, also the deduction herein authorized extending freight charges on basis of remainder, subject to the minimum carload weight specified in Tariff.

When two or more cars are used for extra length Forest Products, the allowance of 500 lbs. for weight of Standard Strips and Stakes or Supports will be deducted for each car used, subject to the minimum carload weight specified in Tariff.

File 3897.

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GENERAL RULES AND CONDITIONS.

1. **Minimum Charge** under this Tariff for any single less than carload shipment will be 25 cents.

2. **Minimum Weight,** unless otherwise specifically provided, will be marked capacity of car, except when the cars are loaded to full visible or carrying capacity and contain less than the marked capacity, actual weight will govern, and except that when cars of greater capacity than ordered are furnished at Company's convenience, actual weight subject to minimum provided for car of the capacity ordered will govern, but in no case less than 30,000 lbs. File 3851.

Where standard cars of 34 feet or longer are ordered by shipper, and equipment of larger size is furnished at carrier's convenience, the minimum carload weight to be applied, if governed by length of car, shall be that provided for car of length called for, but not less than for the length of car required to contain the load.

3. **Use of Class Rates.** Where Class Rates, governed by Western Classification and Exceptions thereto make lower rates than are otherwise provided herein, such lower rates will govern.

4. **Mixed Carloads.** Where two or more commodities are included in one item, they may be shipped in straight or mixed carloads at the rate provided herein, unless otherwise specified.

5. **Weights—Perishable Freight.** On shipments of Green Fruit and Vegetables, subject to decrease in weight by evaporation, agents at destination will collect charges on basis of weight ascertained at point of shipment.

6. **All Carload Freight** must be loaded by the shipper, delivered to the carrier in one lot, covered by one shipping receipt reading from one shipper to one consignee and destination, and unloaded by the consignee or owner or at his expense, unless otherwise specifically provided. File J-1053

7. **Shipper's Count.** When freight is loaded by shipper, and at "Shipper's Count," this Company will not be responsible, directly or indirectly, for damage resulting from improper stowage or insufficient packing, or for any discrepancy in count.

8. **Diversions.** This Company will permit diversion of freight, either in transit or after arrival at original or subsequent destination (if no part of shipment has been removed from car or possession of carrier), at the through published rate, plus car service, storage and other charges, if any, at original or subsequent destination, provided final destination is in the same general direction as the point to which freight was originally consigned. File 3711.

9. **Demurrage.** Under this Tariff when freight is to be loaded by consignor or unloaded by the consignee, car service charges for delay in loading or unloading will be assessed in accordance with rates, rules and regulations of the Pacific Northwest Car Service Association, S. P. Co. No. L-29, P. N. C. S. A., I. C. C. No. 1, amendments thereto or subsequent issues thereof, and such charges will be added to the rates named herein and constitute a part of the total charges to be collected by the carrier on the property. File 3469.

10. **Storage.** On all shipments of freight in less than carload quantities, remaining in warehouses of this Company awaiting delivery to consignee, storage will be charged in accordance with Freight Tariff No. L-24, I. C. C. N. O-41, amendments thereto or subsequent issues thereof. File 3855.

11. **River Transfer.** On carload freight interchanged between river steamer lines and Southern Pacific Co. at Ainsworth Dock or Southern Pacific Co.'s Docks and Portland or East Portland and not covered by through published rates, a charge of 25 cents per ton of 2,000 lbs. will be made for unloading from cars to dock or loading from dock to cars, where such service is performed by Southern Pacific Co. File 3855.

GENERAL RULES AND CONDITIONS—Continued.

12. **Returned Goods.** Unless lower rates are otherwise provided, one-half Tariff rates current at time of re-shipment will apply on shipments of goods returned to original point of shipment on account of being defective, unsalable or refused by consignees, subject to the following rules and conditions:

a. No shipment will be returned until all charges have been paid or fully guaranteed.

b. Goods must be returned to the point from which originally shipped

c. Way-bills must show date of original shipment, and also bear notation "Returned Shipment."

d. The established minimum charge as provided herein to prevail in all cases, no reduction to be made therefrom.

File 1785.

13. **Time Tables and Schedules** for the movement of trains may be varied by the Company at its pleasure or convenience. It does not undertake to carry goods or live stock to arrive at any market point on any particular market day or market hour; nor are its time cards and time tables to be regarded as an undertaking by the Company to deliver at the hours or times therein specified.

APPLICATION OF RATES.

1. **Portland** as used in this Tariff refers to Portland proper (Park St. Station) and is point of interchange with connecting lines.

2. Except as otherwise provided, rates named herein to or from Portland apply to or from Portland (Park St. Station) only—not Portland (Jefferson St.) or East Portland, except that rates between Portland and East Side Division points will apply to or from East Portland as intermediate.

3. **Portland (Jefferson St.)** is terminus of Yamhill Division only and rates named to or from that point will not apply on traffic interchanged with Connecting Lines at Portland, nor in combination on Portland to make rates to points south thereof on Southern Pacific Co., unless otherwise specifically provided.

4. For rates between Portland and East Portland, see Switching Tariff No. I-10. I. C. C. No. O-26, amendments thereto or subsequent issues thereof.

5. Except as may be otherwise specifically provided, carload rates named herein apply only to and from regular transfer, team or side tracks of this Company, within yard limits, at all stations.

File 915.

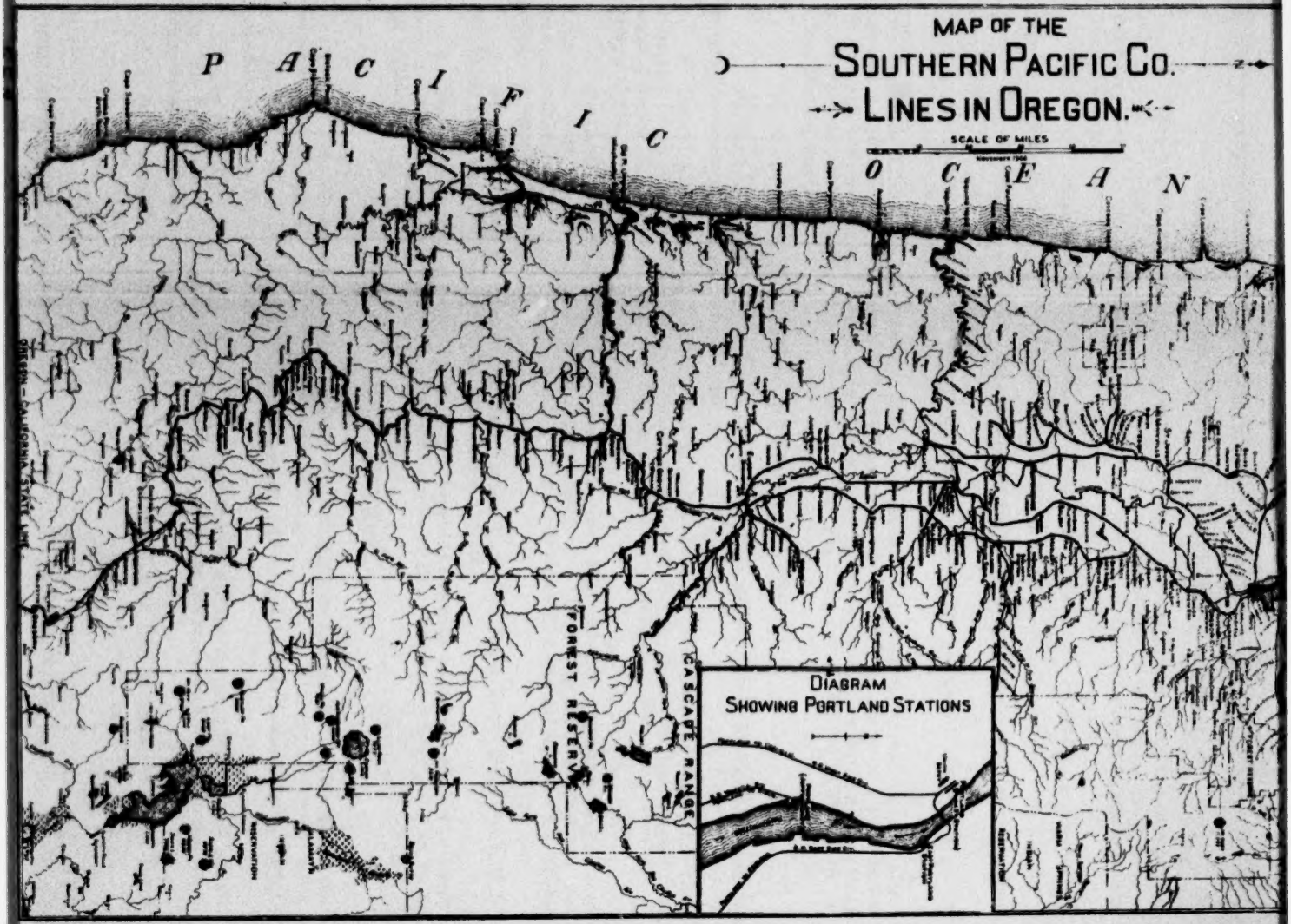
EXPLANATION.

Term "C. L." indicates rate is for movement in carload quantities, at minimum weight provided in Rule 2, Page 27, unless otherwise provided.

"L. C. L." refers to less than carload shipments and indicates that lower rate in carload quantities may be found in Tariff.

"Any quantity" indicates that rate shown applies in carload or less than carload quantities, but any carload rate elsewhere provided, if it produces lower charges, will govern at minimum weight provided for same.

"N. O. S." is understood to mean not otherwise specified in the Classification or the Tariff.


MAP OF THE
SOUTHERN PACIFIC CO.
LINES IN OREGON.
SCALE OF MILES
PACIFIC OCEAN
FOREST RESERVE
CASCADE RANGE
DIAGRAM
SHOWING PORTLAND STATIONS

I. C. C. N 835

Exhibit H

SOUTHERN PACIFIC COMPANY.

(PACIFIC SYSTEM.)

LUMBER SPECIALS No. 3

NAMING RATES FOR TRANSPORTATION

—OF—

LUMBER AND ITS PRODUCTS, AS SHOWN HEREIN

—BETWEEN—

POINTS NAMED HEREIN ON LINES OF SOUTHERN PACIFIC COMPANY
(Pacific System).

(AS SHOWN WITHIN).

EFFECTIVE JANUARY 17, 1907.

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San Francisco, Cal., January 15, 1907
Filed I. C. C. January 15, 1907.
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APPLICATION OF TARIFF.

Rates named on Lumber and its products per 1000 feet in carloads or less than carload will apply regardless of whether class rates make higher or lower charges.

ARTICLES ON WHICH RATES ARE APPLICABLE.

Rates on Lumber will apply on Lumber only, and not on manufactured products of same, except as otherwise provided

	GROUP No.	ARTICLES.
Blinds, etc., per	1	Blinds and Unglazed Doors and Sash, Common Pine, Redwood or Cypress, Tin Covered Doors and Fixtures.
Blinds, etc., per	2	Blinds and Unglazed Doors and Sash, other than Common Pine, Redwood, Cypress, Black Walnut, Cherry, Mahogany or Tin Covered.
Blinds, etc., per	3	Blinds, Balustrade Work, Blocks (base, center, corner and head), Carpenters' Moldings, Molded Casings, Closet and Pantry Fittings, Columns, Corner Beads, Cornice Brackets, Doors (unglazed), Frames (blind, door, screen and window), Gable Ornaments, Hand Rails, Paneling, Pilasters, Porch Work, Sash (unglazed), Scroll Work, Stair Work, K. D. (newels, risers, trellises, railings, balusters and post ornaments), Window Stools and Aprons when made of other Woods than Black Walnut, Cherry or Mahogany.
Cross Arms, per	4	Cross Arms, Wooden Telegraph or Telephone.
Doors, etc., per	5	Doors, Common Pine, Redwood or Cypress, Glazed or Unglazed; if Glazed, released.
Doors, etc., per	6	Doors, Glazed with Common Window Glass, released, made of Common Pine, Redwood or Cypress.
Doors, etc., per	7	Doors, Unglazed (Common Pine, Redwood or Cypress).
Frames, etc., per	8	Frames, Door, Window and Screen, Carpenters' Moldings, Cornice Brackets, Wainscotting, Handrails, Balustrade Work and similar Inside Finishing Lumber.
Trimmings, per	9	House Trimmings, Sash, Doors and Blinds, Common Pine or Redwood, Unglazed or Glazed, with Common Window Glass, Rel.
Logs, etc., per	10	Logs, Oak and Ship Knees.
Logs, etc., per	11	Logs, Redwood (Round Timber).
Lumber, per	12	Lumber and its products (except Hardwood Lumber).
Lumber, per	13	Lumber and its products, including Split Lumber.
Lumber, per	14	Lumber and its products, viz.: Lath, Shingles, Shakes, Fence Posts, Box Stuff, Railroad Ties, Piles, Telegraph Poles (Wooden), Pipe Material (Wooden), Tank Material (Wooden), Water Pipe Staves (Wooden), and Sawdust, straight or mixed carloads; Doors, Sashes, Glazed, released), and Blinds; Door and Window Frames, Wired; Blocks (Base, Center, Corner, Head) and Carpenters' Moldings; in straight or mixed carloads, or mixed with Lumber, Lath, Shingles or Shakes.
Lumber, per	15	Lumber and Telegraph Poles.
Lumber, per	16	Lumber, Boxstuff, Sash and Doors.
Lumber, per	17	Lumber, Doors, Sash, Blinds and Moldings.
Lumber, per	18	Lumber, Lath and Shingles only.
Lumber, per	19	Lumber, Lath, Shingles, Shakes, Staves, Stave Bolts, Fence Posts, Pickets, Box Stuff and Telegraph Poles.
Lumber, per	20	Lumber (soft), Lath, Shingles and other articles taking Lumber Tariff Rates under Western Classification, straight or mixed.
Lumber, per	21	Lumber to be manufactured and reshipped.
Posts, etc.	22	Posts, Pickets and Grape Stakes.
Sash, etc., per	23	Sash and Doors (glazed with window glass, released), Common Pine, Redwood or Cypress.
Sash, etc., per	24	Sash, Doors and Blinds, Common Pine or Redwood, Unglazed or Glazed with Common Window Glass, Rel.
Sash, etc., per	25	Sash, Glazed, with Common Window Glass, released, made of Common Pine, Redwood or Cypress.
Sash, etc., per	26	Sash, Unglazed, Common Pine, Redwood or Cypress.
Timbers, per	27	Timbers, Rough Mining, not less than 2 inches in thickness, 6 inches in width, carloads, minimum weight 40,000 lbs., except when cars are loaded to their full space capacity, actual weight will govern.
Lumber, per	28	Soft Lumber, Shingles, Lath, Shakes, Posts, Stakes, Piles, Railroad Ties, Telegraph Poles, Box Stuff, Redwood and Pine Bolts, and Bark in carloads.

APPLICATION OF RATES

Abbreviations used in application column indicate:

Int.—Rates to or from (in direction indicated) points intermediate to those shown must not be higher.

I.—Rates apply from and to (in direction indicated) points named only.

F. I.—Rates apply from points intermediate to those shown, but will not apply to points other than specifically named.

T. I.—Rates apply to points intermediate to those shown, but will not apply from points other than specifically named.

Intermediate rates applying between Los Angeles, Cal., on the one hand, and points on Covina Branch east of Bassett, Cal., also points Pomona to San Bernardino, Riverside and Crafton, Cal., inclusive, on the other, will also apply between points on the Pasadena Branch and same points, when lower than otherwise provided.

FROM PLACERVILLE, CAL.

Shipments of Lumber and its products, C. L., from Placerville, Cal., and points intermediate to points in Nevada and Utah on Southern Pacific Company's line, apply rates applicable from Sacramento, Cal., to same points, current from time to time.

Shipments of Lumber and its products, C. L., from Placerville., Cal., and points intermediate to Points in New Mexico and Arizona, on or reached by Southern Pacific Company, apply rates applicable from Sacramento, Cal., to same points, current from time to time.

FROM REDWOOD, CAL.

Shipments of Shingles, C. L., from Redwood, Cal., usual minimum, from Redwood to points on Southern Pacific Company's main line and branches in the San Joaquin Valley, apply rates from San Francisco to same points current from time to time, unless lower rate is otherwise provided.

FROM SHELLVILLE JUNCTION, CAL.

Shipments of Lumber and its products, C. L., from Shellville Junction (only) to Points (including branches) on Southern Pacific Company Coast Division (Narrow Gauge) south of San Jose, Cal., apply rate from San Francisco, Cal., to same points, current from time to time, plus transfer charge from broad to narrow gauge cars, when less than direct rate from Shellville Junction.

Shipments of Lumber and its products, C. L., from Shellville Junction (only) to Points on Southern Pacific Company south of Stockton, Lathrop or Tracy, Cal., apply rates applicable from San Francisco, Cal., to same points current from time to time. Applies only on shipments originating at points on California Northwestern Railway.

Shipments of Lumber and its productes, C. L., from Shellville Junction, Cal., only to points (including branches) between Benicia and Tehama, Cal., inclusive, via Davis or Roseville; points (including branches) between Stockton, Cal., and Cal. Nev. State Line; points (including branches) between Rodeo and Stockton, Cal., inclusive, via Martinez, apply also from San Francisco, Cal., to same points current from time to time, if less than direct rate from Shellville Junction.

Shipments of Lumber and its products, C. L., from Shellville Junction, Cal., (only) to points between Suisun, Calistoga and South Vallejo, Cal., inclusive; points (including branches) on Coast Division (Broad Gauge) south of San Jose, Cal., apply rates from San Francisco, Cal., to same points current from time to time, if less than direct rate from Shellville Junction.

COAST DIVISION.
(BROAD AND NARROW GAUGE).

Rates applying on Lumber and its products will apply on the products per 1,000 feet, board measurement. The percentage provisions on pages 23 and 25 of Lumber Tariff No. 3 are applicable on Lumber Tariff rates only, and not on rates published herein.

MEASURING LUMBER

In measuring lumber for freight charges, one-half inch thick, or less, will be figured as one-half inch; over one-half inch thick up to one inch, as one inch. Tongue and Groove Stuff must be measured full width of board. In taking length of boards, one-half foot or over will be considered one foot; under one-half foot will be dropped.

USE OF FLAT CARS

Lumber, Lath, Shingles and freight of similar character, when loaded on flat cars must be staked, and the stakes securely cleated across the top of the load, so as to securely hold the freight in place and prevent spreading or falling off the car in transit. Before receipting for such freight, agents must see that this requirement is complied with.

ITEM No. 2.

MINIMUM CARLOAD WEIGHT

The minimum carload weight will be 60,000 lbs., but not to exceed full space or weight loading capacity of car and not less than 30,000 lbs., unless otherwise specifically provided; except that on traffic moving under Through or Joint Tariff, in force to or from terminal or junction point plus local, the minimum carload weight named in the Through or Joint Tariff when less will also govern local movement.

Agents must ascertain the tonnage to be shipped and furnish cars of required marked weight carrying capacity which will accommodate the shipment, viz.:

SHIPMENT WEIGHING	Furnish Car of Following Marked Weight Carrying Capacity:	Charges to Base on Actual Weight of Shipment, but not less than
33,000 lbs. and under	30,000 lbs.	30,000 lbs.,
Over 33,000 lbs. and under 40,000 lbs.	40,000 lbs.	Actual weight.
40,000 lbs. to 44,000 lbs.	40,000 lbs.	40,000 lbs.
Over 44,000 lbs. and under 50,000 lbs.	50,000 lbs.	Actual weight.
50,000 lbs. to 55,000 lbs.	50,000 lbs.	50,000 lbs.
Over 55,000 lbs. and under 60,000 lbs.	60,000 lbs.	Actual weight.
60,000 lbs. to 66,000 lbs.	60,000 lbs.	60,000 lbs.
Over 66,000 lbs. to 75,000 lbs.	75,000 lbs.	Actual Weight

EXCEPTION.

Dry Sawdust, straight carloads, in cars not exceeding 34 feet in length, 24,000 lbs.

Sash, Doors and Blinds, Door and Window Frames, in straight or mixed carloads 24,000 lbs. If shipped in mixed carload with Lumber, Lath or Shakes, minimum weight will be 60,000 lbs., but not to exceed full space or weight loading capacity of car.

Agents should see that cars are loaded ten per cent above marked weight capacity whenever practicable.

EXCESS OVER CARLOAD

Excess over the carload, otherwise known as "balance of lot," shipped in another car will be charged for at actual weight carload rate.

When flat cars are necessary to forward balance of lot, same will be furnished at Company's convenience; otherwise apply regular less carload rate.

TELEGRAPH POLES

On shipments of Telegraph Poles originating at Points on Coast Division, Narrow Gauge, destined to Broad Gauge points on Pacific System, freight charges should be computed on basis of weights obtained by using estimated weight of 3 1-3 lbs. per foot, but not less than 30,000 lbs. for each car used.

ITEM No. 3.

MINIMUM CHARGE

The minimum charge for any single less than carload shipment will be as follows:

Moving wholly within the State of California ..... 25 cents.
Moving wholly within the State of Oregon ..... 25 cents.
Moving wholly within the State of Nevada ..... 25 cents.
Moving wholly within the State of Utah ..... 25 cents.
Moving wholly within the Territory of Arizona ..... 25 cents.
Moving wholly within the Territory of New Mexico ..... 25 cents.

Moving from a point in one State or Territory to a point in another State or Territory, combination of minimum charges, except as follows:

Moving between Verdi, Nev., and points within California ..... 25 cents.

Example: From San Francisco to Ogden, 75 cents; San Francisco to Reno, 50 cents; San Francisco to Los Angeles, 25 cents.

ITEM No. 4.

STORAGE AND DEMURRAGE

Demurrage Charges upon all freight remaining undelivered at stations in California, Arizona, New Mexico and Nevada (west of Sparks), will be assessed in accordance with Pacific Car Service Bureau Rules and Regulations (I. C. C. No. 1), amendments thereto or superseding issues thereof; at Stations Sparks, Nevada and east thereof, in accordance with Utah Demurrage Association Rules and Regulations (I. C. C. No. 1), amendments thereto or reissue.

Storage Charges upon all freight remaining undelivered at stations will be assessed in accordance with the following: General Merchandise, in less than carload quantities—If property is not called for within three days (Sundays and Legal Holidays excepted) after notice of arrival of freight has been served, storage charges will accrue. Charges will be at a rate of five cents per hundred pounds for the first thirty days or under; in excess of thirty days at same proportionate rate. Minimum charge twenty-five (25) cents for each thirty days or fractional part thereof. This Company reserves the right, at the expiration of three days after service of notice of arrival of freight, to place goods in any suitable warehouse, subject to established charges of said warehouse, and at owner's insurance and other risk. Carload Storage and Risk.—This Company reserves the right to allow freight to remain in cars subject to demurrage charge, or unload at expense of owner and thereafter hold subject to storage or place goods in any suitable warehouse, subject to established charge of said warehouse, at owner's insurance and other risk.

ITEM No. 5.

LOADING AND UNLOADING.

Rates named herein do not include cost of loading and unloading. This Company reserves the right to load and unload and to charge therefor on basis of cost of labor employed, but in no case at less rate than 20 cents per ton of 2000 lbs., unless specifically arranged for.

ITEM No. 6.

WEIGHTS.

Freight will be charged at gross weight as obtained over this Company's scales, irrespective of weights given by shippers and inserted on bill of lading; except that when an estimated weight is provided for, such estimated weight will apply unless the actual weight is greater.

MEASUREMENTS OF FOREST PRODUCTS.

Following table shows number of feet, board measure, in each piece of lumber or timber, of dimensions given below.

The figures opposite the end dimensions in the column showing the length represent the number of feet, board measure.

End Dimensions, Inches.	LENGTH IN FEET.										
	10	12	14	16	18	20	22	24	26	28	30
1x 3	2½	3	3½	4	4½	5	5½	6	6½	7	7½
1x 4	3⅓	4	4⅔	5⅓	6	6⅔	7⅓	8	8⅔	9⅓	10
1x 6	5	6	7	8	9	10	11	12	13	14	15
1x 8	6⅔	8	9⅓	10⅔	12	13⅓	14⅔	16	17⅓	18⅔	20
1x10	8⅓	10	11⅔	13⅓	15	16⅔	18⅓	20	21⅔	23⅓	25
1x12	10	12	14	16	18	20	22	24	26	28	30
1x14	11⅔	14	16⅓	18⅔	21	23⅓	25⅔	28	30⅓	32⅔	35
1x16	13⅓	16	18⅔	21⅓	24	26⅔	29⅓	32	34⅔	37⅓	40
1x18	15	18	21	24	27	30	33	36	39	42	45
1x20	16⅔	20	23⅓	26⅔	30	33⅓	36⅔	40	43⅓	46⅔	50
1x22	18⅓	22	25⅔	29⅓	33	36⅔	40⅓	44	47⅔	51⅓	55
1x24	20	24	28	32	36	40	44	48	52	56	60
1x26	21⅔	26	30⅓	34⅔	39	43⅓	47⅔	52	56⅓	60⅔	65
1x28	23⅓	28	32⅔	37⅓	42	46⅔	51⅓	56	60⅔	65⅓	70
1x30	25	30	35	40	45	50	55	60	65	70	75
2x 3	5	6	7	8	9	10	11	12	13	14	15
2x 4	6⅔	8	9⅓	10⅔	12	13⅓	14⅔	16	17⅓	18⅔	20
2x 6	10	12	14	16	18	20	22	24	26	28	30
2x 8	13⅓	16	18⅔	21⅓	24	26⅔	29⅓	32	34⅔	37⅓	40
2x10	16⅔	20	23⅓	26⅔	30	33⅓	36⅔	40	43⅓	46⅔	50
2x12	20	24	28	32	36	40	44	48	52	56	60
2x14	23⅓	28	32⅔	37⅓	42	46⅔	51⅓	56	60⅔	65⅓	70
2x16	26⅔	32	37⅓	42⅔	48	53⅓	58⅔	64	69⅓	74⅔	80
2x18	30	36	42	48	54	60	66	72	78	84	90
2x20	33⅓	40	46⅔	53⅓	60	66⅔	73⅓	80	86⅔	93⅓	100
2x22	36⅔	44	51⅓	58⅔	66	73⅓	80⅔	88	95⅓	102⅔	110
2x24	40	48	56	64	72	80	88	96	104	112	120
2x26	43⅓	52	60⅔	69⅓	78	86⅔	95⅓	104	112⅔	121⅓	130
2x28	46⅔	56	65⅓	74⅔	84	93⅓	102⅔	112	121⅓	130⅔	140
2x30	50	60	70	80	90	100	110	120	130	140	150
3x 3	7½	9	10½	12	13½	15	16½	18	19½	21	22½
3x 4	10	12	14	16	18	20	22	24	26	28	30
3x 6	15	18	21	24	27	30	33	36	39	42	45
3x 8	20	24	28	32	36	40	44	48	52	56	60
3x10	25	30	35	40	45	50	55	60	65	70	75
3x12	30	36	42	48	54	60	66	72	78	84	90
3x14	35	42	49	56	63	70	77	84	91	98	105
3x16	40	48	56	64	72	80	88	96	104	112	120
3x18	45	54	63	72	81	90	99	108	117	126	135
3x20	50	60	70	80	90	100	110	120	130	140	150
3x22	55	66	77	88	99	110	121	132	143	154	165

End Dimensions, Inches.	LENGTH IN FEET.										
	10	12	14	16	18	20	22	24	26	28	30
3x24	60	72	84	96	108	120	132	144	156	168	180
3x26	65	78	91	104	117	130	143	156	169	182	195
3x28	70	84	98	112	126	140	154	168	182	196	210
3x30	75	90	105	120	135	150	165	180	195	210	225
4x 4	13⅓	16	18⅔	21⅓	24	26⅔	29⅓	32	34⅔	37⅓	40
4x 6	20	24	28	32	36	40	44	48	52	56	60
4x 8	26⅔	32	37⅓	42⅔	48	53⅓	58⅔	64	69⅓	74⅔	80
4x10	33⅓	40	46⅔	53⅓	60	66⅔	73⅓	80	86⅔	96⅓	100
4x12	40	48	56	64	72	80	88	96	104	112	120
4x14	46⅔	56	65⅓	74⅔	84	93⅓	102⅔	112	121⅓	130⅔	140
4x16	53⅓	64	74⅔	85⅓	96	106⅔	117⅓	128	133⅓	149⅓	160
4x18	60	72	84	96	108	120	132	144	156	168	180
4x20	66⅔	80	93⅓	106⅔	120	133⅓	146⅔	160	173⅓	186⅔	200
6x 6	30	36	42	48	54	60	66	72	78	84	90
6x 8	40	48	56	64	72	80	88	96	104	112	120
6x10	50	60	70	80	90	100	110	120	130	140	150
6x12	60	72	84	96	108	120	132	144	156	168	180
6x14	70	84	98	112	126	140	154	168	182	196	210
6x16	80	96	112	128	144	160	176	192	208	224	240
6x18	90	108	126	144	162	180	198	216	234	252	270
6x20	100	120	140	160	180	200	220	240	260	280	300
8x 8	53⅓	64	74⅔	85⅓	96	106⅔	117⅓	128	138⅔	149⅓	160
8x10	66⅔	80	93⅓	106⅔	120	133⅓	146⅔	160	173⅓	186⅔	200
8x12	80	96	112	128	144	160	176	192	208	224	240
8x14	93⅓	112	130⅔	149⅓	168	186⅔	205⅓	224	244⅓	261⅓	280
8x16	106⅔	128	149⅓	170⅔	192	213⅓	234⅔	256	277⅓	298⅔	320
8x18	120	144	168	192	216	240	264	288	312	336	360
8x20	133⅓	160	186⅔	213⅓	240	266⅔	293⅓	320	346⅔	373⅓	400
10x10	83⅓	100	116⅔	133⅓	150	166⅔	183⅓	200	216⅔	233⅓	250
10x12	100	120	140	160	180	200	220	240	260	280	300
10x14	116⅔	140	163⅓	186⅔	210	233⅓	256⅔	280	303⅓	326⅔	350
10x16	133⅓	160	186⅔	213⅓	240	266⅔	293⅓	320	346⅔	373⅓	400
10x18	150	180	210	240	270	300	330	360	390	420	450
10x20	166⅔	200	233⅓	266⅔	300	333⅓	366⅔	400	433⅓	466⅔	500
12x12	120	144	168	192	216	240	264	288	312	336	360
12x14	140	168	196	224	252	280	308	336	364	392	420
12x16	160	192	224	256	288	320	352	384	416	448	480
12x18	180	216	252	288	324	360	396	432	468	504	540
12x20	200	240	280	320	360	400	440	480	520	560	600

NOTE.—In figuring number of feet of lumber, fractions under six inches will be dropped; six inches or over will be considered one foot.

TABLE GIVING NUMBER OF FEET, BOARD MEASURE, CONTAINED IN SAWED TELEGRAPH POLES OF DIMENSIONS SHOWN.

END DIMENSIONS.	LENGTH IN FEET.									
	20	22	24	25	30	35	40	45	50	60
4x4 — 6x 6	42	46	51	53	63	74	84	95	106	127
4x4 — 8x 8	62	68	75	78	93	109	124	140	156	187
4x5 — 8x 8	67	73	80	83	100	117	133	150	167	200
4x5 — 10x10	93	101	110	115	138	160	183	206	229	275
5x5 — 8x 8	72	79	86	90	108	125	143	161	179	215
5x5 — 10x10	97	107	117	122	146	170	194	219	243	292
6x6 — 9x 9	95	105	114	119	143	166	190	214	238	285
6x6 — 10x10	109	120	131	136	163	191	218	245	272	327
6x6 — 12x12	140	154	168	175	210	245	280	315	350	420
7x7 — 10x10	122	134	146	152	183	213	243	274	304	365
7x7 — 12x12	154	169	185	192	231	269	308	346	385	462
8x8 — 13x13	187	206	225	234	281	328	374	421	468	562
8x8 — 14x14	207	227	248	258	310	362	413	465	517	620
8x8 — 16x16	249	274	299	311	373	436	498	560	622	747

FOR COAST DIVISION ONLY.

GRAPE STAKES			POSTS			PICKETS		
End Dimensions.	Length in Feet.	Number to Cord.	End Dimensions.	Length in Feet.	Number to Cord.	End Dimensions.	Length in Feet.	Number to Cord.
2x2	4	750	3x4	5	200	2x3	6	333
2x2	5	600	4x4	6½	115	3x3	6	222
2x2	6	500	4x5	7	85	...	..	...
2x2	9	333	...	..	...	...	..	...

RULE FOR ARRIVING AT SQUARE OR CUBIC MEASURE OF SQUARE OR ROUND POLES.

TO FIND THE CONTENTS OF SQUARE POLES.

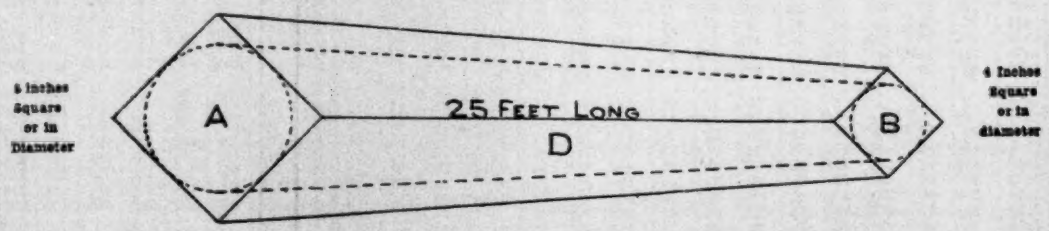
FORMULA.

A = Large end.
B = Small end.
D = Length.
$A^2 \times B^2 \times (A \times B) \times D \div 3 \div 12$ = Square contents.

TO FIND THE CONTENTS OF ROUND POLES.

FORMULA.

A = Large end.
B = Small end.
D = Length.
$A^2 \times B^2 \times (A \times B) \times .7854 \times D \div 3 \div 12$ = Square contents.



EXAMPLE:

$A^2 = 8 \times 8 = 64$
$B^2 = 4 \times 4 = 16$
$A \times B = 8 \times 4 = 32$
112
Length of pole, 25
560
224
312800
12)9333
12)777½ Square feet.
6½ Cubic feet.

EXAMPLE:

$A^2 = 8 \times 8 = 64$
$B^2 = 4 \times 4 = 16$
$A \times B = 8 \times 4 = 32$
112
Reduce to circ. area, .7854
448
560
896
784
87.9648
Length of pole in feet, 25
4398240
1759296
3)2199.1200
12)733.04
12)61.08 + Square feet.
509 Cubic feet.

NOTE.—In figuring number of feet of Lumber, fractions under 6 inches will be dropped; 6 inches or over will be considered one foot.

Station No.	FROM	Station No.	TO	ON	Application.	Rate in Cents per Ton of 2,000 Lbs., Except as shown.	REMARKS
		33	San Jose.....Cal.	Lumber, per group 18, C.L.	Int.	1000 ft. 100	Via Coast Division, Broad and Narrow Gauge.
		60	Corbin..... "	" ..... "	Int.	Ton. 50	
		120	Valley Spring.... "	" per group 14 "	Int.	180	
		128	Carbondale ..... "	" " " "	N. I.	215	
		133	Ione..... "				
		541	Glen Ellen..... "	Box Shooks.....L. C. L	Int.	100 lbs. 10	
		552	Santa Rosa..... "				
		552	Santa Rosa..... "	Lumber, per group 12, C. L.	Int.	Ton. 180	
		558	Napa..... "	Box Shooks, ton lots.....	N. I.	100	
		570	St. Helena..... "	Staves.....C. L.	Int.	190	
		894	Los Angeles..... "	Sash and Doors, glazed and unglazed.....C. L.	Int.	550	Min. wt. 12 tons. Applications intermediate via Lathrop and Tracy.
		972	Pasadena..... "	Lumber, per group 14, "	N. I.	610	
1	San FranciscoCal	1213	Mayfield..... "	" " 28, "	Int.	1000 ft. 75	Min. 7,200 ft.
		1223	Campbell..... "	" ..... "	Int.	175	
		1227	Los Gatos..... "	" per group 28, "	T. I.	200	Via Coast Division, Narrow Gauge.
		1242	Morganhill..... " (Via San Jose.)	" " " "	Int.	225	In lots of 50,000 ft. or more, Lath, Shingles, etc., take proportionate rate as provided in regular Tariff.
		1251	Hollister..... "	" " " "	Int.	300	
		1252	Tres Pinos..... "	" " " "	Int.	350	
		1280	Monterey..... "	" ..... "	N. I.	300	
		1280 a	New Monterey .. "	" ..... "	N. I.	325	
		1281	Pacific Grove.... "	" ..... "	N. I.	375	
		1422	Centerville..... "	" ..... "	Int.	100	
		1469	Powder Works .. "	" ..... "	N. I.	350	Via Coast Division, Narrow Gauge.
		1471	Santa Cruz..... " (Via Coast Div., Narrow Gauge.)	" ..... "	N. I.	300	Lath & Shingles take proportionate rate.
			For rates to Arizona points see last page of Special				
		33	San Jose.....Cal.	Lumber, per group 18..C. L.	Int.	100	Via Western Division.
		1223	Campbell..... "	" ..... "	Int.	175	
2	Oakland Wharf"	51	Berkeley..... "	Lumber, Lath and Shingles, straight.....C. L.	Int.	Ton. 25	Minimum charge $5.00 per car
		60	Corcoin..... "	Lumber..... "	Int.	50	

Station No.	FROM	Station No.	TO	ON	Application	Rate in Cents per Ton of 2,000 Lbs., Except as shown.	REMARKS
		80	Martinez.....Cal.	Lumber.....C. L.	N. I.	90	
		81	Ertz..... "	" ..... "	N. I.	60	
		84	Concord..... "	" ..... "	Int.	90	Does not include loading.
		120	Valley Spring... "	" per group 14 "	Int.	180	
		128	Carbondale..... "	" " 12, "	N. I.	215	
		133	Ione..... "				
		552	Santa Rosa..... "	" " " "	Int.	240	
	Oakland Whf.Cal.					1000 ft.	
		1242	Morganhill..... " (Via San Jose.)	" " 28 "	Int.	225	In lots of 50,000 ft. or more, Lath, Shingles, etc., take proportionate rate as provided in regular Tariff.
		1251	Hollister..... "	" " " "	Int.	300	
		1273	Santa Cruz..... "	" " " "	N. I.	300	(Via Western Division.)
		1280	Monterey..... "	" ..... "	N. I.	300	
		1280½	New Monterey .. "	" ..... "	N. I.	325	
		1281	Pacific Grove.... "	" ..... "	N. I.	375	
						Ton.	
		1297	Kings City..... "	" ..... "	Int.	480	(Via San Jose.)
		80	Martinez..... "	" ..... "	N. I.	60	
2	Oakland, Adam's Wharf.....Cal.	80½	Ertz..... "	" ..... "	N. I.	60	
		92	Bay Point..... "	" per group 14 "	Int.	60	Does not include Loading.
				Box Shooks ..... "	Int.	60	
						100 lbs.	
		67	Giant..... "	" .....L. C. L.	Int.	06	
						Ton.	
		120	Valley Springs... "	Lumber, per group 14, C. L.	Int.	180	
		128	Carbondale..... "	" " " "	N. I.	215	
		133	Ione..... "				
						100 lbs	
4	Oakland.....Cal.			Doors, etc., per group 5, ...L. C. L.	Int.	13	
		552	Santa Rosa..... "	Sash, Unglazed.... "	Int.	18	
				" Glazed..... "	Int.	15	
						1000 ft.	
		1273	Santa Cruz..... "	Lumber.....C. L.	N. I.	300	(Via Western Division.)
						Ton.	
		1297	Kings City..... "	" ..... "	Int.	480	(Via San Jose.)
33	San Jose..... "		For rates to Arizona	points see last page of Special.			
51	Berkeley..... "	1	San Francisco...Cal.	Cross Arms, per group 4, ...C. L.	Int.	65	
66	San Pablo.... "	1	San Francisco... "	Lumber..... "	Int.	50	
		4	Oakland..... "				
		92	Bay Point..... "	" ..... "	Int.	60	
		120	Valley Springs... "	" per group 14, "	N. I.	180	
75	Vallejo Junc.. "	133	Ione..... "	" " " "	N. I.	185	
		553	South Vallejo ... "	" ..... "	N. I	60	

Station No.	FROM	Station No.	TO	ON	Application	Rate in Cents per Ton of 2,000 Lbs., Except as shown.	REMARKS
89	Danville.....Cal.	1	San Francisco...Cal.	Logs, Locust, Oak, Walnut, also Ship Knee.....C. L.	Int.	175	
		4	Oakland..... "	Lumber, per group 14, "	Int.	120	
		1	San Francisco... "	" and its Products, ...C. L.	N. I.	100	
94	Cornwall..... "	2	Oakland Wharf.. "	" " "	N. I.	100	
		4	Oakland..... "	" " "	N. I.	100	
		99	Brentwood..... "	" ..... "	Int.	55	
		116	Lockeford..... "	Lumper, per group 14, "	Int.	75	
				Lumber, per group 14, ...L. C. L.	Int.	90	
107	Stockton..... "	117	Clements..... "	Lumber per group 14, C. L.	Int.	90	
				Lumber, per group 14, ...L. C. L.	Int.	105	
		894	Los Angeles..... "	Sash and Doors, glazed and unglazed.....C. L.	Int.	550	Min. wt. 12 tons. Application intermediate via Lathrop and Tracy.
			For rates to Arizona	points see last page of Specials.			
		114	Woodbridge....Cal.	Lumber per group 14, C. L.	Int.	25	
				" .....L. C. L.	Int.	35	
		115	Gillespie..... "	" per group 14, C. L.	Int.	30	
				" .....L. C. L.	Int.	40	
113	Lodi..... "	116	Lockeford..... "	" per group 14, C. L.	Int.	50	
				" .....L. C. L.	Int.	60	
		118	Wallace..... "	" per group 14, C. L.	Int.	100	
		119	Heliama..... "	" " "	Int.	125	
		120	Valley Springs... "	" " "	Int.	162½	
128	Carbondale... "	133	Ione..... "	" " "	N. I.	215	
		1	San Francisco.... "	" ..... "	Int.	215	
133	Ione..... "	33	San Jose..... "	Logs, Locust..... "	Int.	215	
		107	Stockton..... "	Lumber..... "	Int.	275	
		141	Sacramento..... "	" ..... "	Int.	115	
				Shakes..... "	Int.	180	
		533	Shellville Junc... "	Lumber..... "	F. I.	170	Applies only as proportional rate on shipments destined points on Cal.-N. W. Ry.
141	Sacramento... "	894	Los Angeles. ... "	Sash and Doors, glazed and unglazed.....C. L.	Int.	550	Min. wt. 12 tons. Application intermediate via Lathrop and Tracy.
			For rates to Arizona	points see last page of Specials.			
143	Manlove..... "	1	San Francisco .. "	Logs, Locust.....C. L.	Int.	160	
144	Mayhew..... "			" ..... "	Int.	175	
155	Folsom..... "	167	El Dorado..... "	Lumber..... "	Int.	150	

Station No.	FROM	Station No.	TO	ON	Application	Rate in Cents per Ton of 2,000 Lbs., Except as shown.	REMARKS
		533	Shellville Junc. .Cal.	Lumber.....C. L.	F. I.	270	Applies only as proportional rate on shipments destined points on C.-N. W. Ry.
		716	Armona..... "	Box Shooks ..... "	Int.	510	
		717	Goshen Junc.... "	" " ..... "	Int.	510	
		721	Lemoore..... "	" " ..... "	Int.	530	
		730	Visalia..... "	" " ..... "	Int.	540	
		766	Fresno... ..... "	" " ..... "	Int.	400	
		771	Clovis..... "	" " ..... "	Int.	400	
		785	Fortuna..... "	" " ..... "	Int.	410	
		788	Reedley..... "	" " ..... "	Int.	420	
		789	Dinuba..... "	" " ..... "	Int.	430	
		790	Monson..... "	" " ..... "	Int.	440	
		791	Taurusa..... "	" " ..... "	Int.	450	
		793	Kaweah..... "	" " ..... "	Int.	460	
		794	Exeter..... "	" " ..... "	Int.	470	
		795	Lindsay..... "	" " ..... "	Int.	480	
155	Folsom.....Cal.	796	Santos..... "	" " ..... "	Int.	490	
		799	Porterville..... "	" " ..... "	Int.	500	
		802	Terra Bella..... "	" " ..... "	Int.	515	
		803	Orris..... "	" " ..... "	Int.	530	
		804	Jasmin..... "	" " ..... "	Int.	545	
		807	Malaga..... "	" " ..... "	Int.	410	
		809	Fowler..... "	" " ..... "	Int.	430	
		810	Selma..... "	" " ..... "	Int.	450	
		811	Kingsburg..... "	" " ..... "	Int.	470	
		812	Traver..... "	" " ..... "	Int.	490	
		815	Tulare..... "	" " ..... "	Int.	540	
		822	Famoso..... "	" " ..... "	Int.	560	
		824	Jewetta..... "	" " ..... "	Int.	580	
		831	Bakersfield..... "	" " ..... "	Int.	595	
		875 to 1354	Saugus, Elwood.. " and points between on Ventura Branch.....	" " ..... "	Int.	600	
168	Diamond Sprgs "	533	Shellville Junc..Cal.	Lumber..... "	F. I.	270	Applies only as proportional rate on shipments destined points on Cal.-N. W. Ry.
		1	San Francisco... "	Sawdust..... "	Int.	225	Minimum weight: 10 tons per car not over 30 feet in length. 14 tons per car not over 34 feet in length. 15 tons per car not over 36 in length.
		4	Oakland..... "				
		33	San Jose..... "				
		107	Stockton..... "				
		141	Sacramento..... "				
		141	Sacramento..... "	Lumber..... "	F. I.	100	Applies only as proportional rate on shipments destined Utah Points east of Ogden points in Colorado and Wyoming.
		155	Folsom ..... "	" per group 14.. "	Int.	90	
169	Placerville.... "	533	Shellville Junc... "	" ..... "	F. I.	270	Applies only as proportional rate on shipments destined points on Cal.-N. W. Ry.
		859	Points on S. P. Co.'s Main Line and Branches south of Mojave.....Cal.	Lumber, per group 14, "	Int.	....	Sacramento rates plus $1.00 per ton will apply unless otherwise provided.
		875	Saugus..... "	Box Shooks..... "	Int.	600	
		894	Los Angeles..... "	Lumber..... "	Int.	700	

Station No.	FROM	Station No.	TO	ON	Application.	Rate in Cents per Ton of 2,000 Lbs., Except as shown.	REMARKS
		894	Los Angeles. . . .Cal.				
		908	Santa Monica.... "				
		923	Long Beach..... "				
		926	San Pedro..... "				
		937	Whittier..... "				
		946	Los Alamitos..... "				
		953	Tustin..... "				
		957	Santa Ana..... "				
		961	Newport Beach.. "	Box Shooks.....C. L.	Int.	500	
		965	Smeltzer..... "				
		972	Pasadena..... "				
		984	Duarte.....—"				
		1000	Lordsburg..... "				
		1007	Chino..... "				
		1021	Riverside..... "				
		1022	San Bernandino. "				
		1031	Crafton..... "				
169	Placerville. . .Cal.	1079	Colorado..... "	Lumber..... "	Int.	860	
		1131	Rock Spur.....Ariz.				
		1132	Grand Central... "	" per group 20, "	Int.	1000	
		1133	Fairbank..... "				
		1134	Brookline..... "	" " "	Int.	1065	
		1135	Huachuca..... "	" " "	Int.	1110	
		1136	Elgin..... "	" " "	Int.	1190	
		1137	Sonoita..... "	" " "	Int.	1240	Applies via Stockton, Lathrop or Tracy, Cal., only.
		1138	Crittenden..... "	" " "	Int.	1270	
		1139	Patagonia..... "	" " "	Int.	1270	
		1140	Bloxton..... "	" " "	Int.	1320	
		1141	Sanford..... "	" " "	Int.	1320	
		1142	Calabasas..... "	" " "	Int.	1350	
		1143	Nogales..... "	" " "	Int.	1350	
		1354	Elwood..... "	Box Shooks ..... "	Int.	600	
		1378	Nordhoff..... "	" " ..... "	Int.	600	
178	Newcastle.... "						
185	New Eng. Mills "						
187	Colfax..... "						Applies only as proportional rate on shipments destined points on Cal.-N. W. Ry.
191	Gold Run..... "	533	Shellville Junc..Cal.	Lumber..... "	F. I.	270	
192	Dutch Flat... "						
194	Towle..... "						
		716	Armona..... "	Box Shooks ..... "	Int.	510	
		717	Goshen Junc.... "	" " ..... "	Int.	510	
		719	Hanford ..... "	" " ..... "	Int.	510	
		721	Lemoore..... "	" " ..... "	Int.	530	
		730	Visalia..... "	" " ..... "	Int.	540	
		766	Fresno..... "	" " ..... "	Int.	400	
		771	Clovis..... "	" " ..... "	Int.	400	
		783	Sanger..... "	" " ..... "	Int.	400	
		785	Fortuna..... "	" " ..... "	Int.	410	
		788	Reedley..... "	" " ..... "	Int.	420	
194	Towle..... "	789	Dinuba..... "	" " ..... "	Int.	430	
		790	Monson..... "	" " ..... "	Int.	440	
		791	Taurusa..... "	" " ..... "	Int.	450	
		793	Kaweah..... "	" " ..... "	Int.	460	
		794	Exeter..... "	" " ..... "	Int.	470	
		795	Lindsay..... "	" " ..... "	Int.	480	
		796	Santos..... "	" " ..... "	Int.	490	
		799	Porterville..... "	" " ..... "	Int.	500	
		802	Terra Bella..... "	" " ..... "	Int.	515	
		803	Orris..... "	" " ..... "	Int.	530	

Station No.	FROM	Station No.	TO	ON	Application.	Rate in Cents per Ton of 2,000 Lbs., Except as shown.	REMARKS
		804	Jasmin.....Cal.	Box Shooks .....C. L.	Int.	545	
		807	Malaga..... "	" " ..... "	Int.	410	
		809	Fowler..... "	" " ..... "	Int.	430	
		810	Selma..... "	" " ..... "	Int.	450	
		811	Kingsburg..... "	" " ..... "	Int.	470	
		812	Traver..... "	" " ..... "	Int.	490	
		815	Tulare..... "	" " ..... "	Int.	540	
		822	Famoso..... "	" " ..... "	Int.	560	
		824	Jewetta ..... "	" " ..... "	Int.	580	
		831	Bakersfield..... "	" " ..... "	Int.	595	
		875	Saugus..... "	" " ..... "	Int.	600	
		891	Chatsworth Park "				
		894	Los Angeles..... "				
		908	Santa Monica..... "	" " ..... "	Int.	600	
		923	Long Beach..... "				
		926	San Pedro..... "				
194	Towle.....Cal.	937	Whittier..... "				
		946	Los Alamitos.... "				
		953	Tustin..... "				
		957	Santa Ana..... "				
		961	Newport Beach.. "				
		965	Smeltzer..... "				
		972	Pasadena..... "				
		984	Duarte..... "	" " ..... "	Int.	600	
		1000	Lordsburg.....				
		1007	Chino..... "				
		1021	Riverside..... "				
		1022	San Bernardino . "				
		1031	Crafton..... "				
		1227	Los Gatos..... "				
		1319	San Luis Obispo. "				
		1335	Surf..... "	Lumber, per group 13 "	Int.	600	
		1354	Elwood..... "				
		1378	Nordhoff ..... "	Box Shooks ..... "	Int.	600	
197	Blue Canon... "	533	Shellville Junc'.. "	Lumber..... "	F. I.	270	Applies only as proportional rate on shipments destined points on Cal.-N. W. Ry.
199	Emigrant Gap.."	533	Shellville Junc... "	" ..... "	F. I.	270	Applies only as proportional rate on shipments destined points on Cal.-N. W. Ry.
		174	Roseville ..... "	" ..... "	Int.	175	
		187	Colfax..... "	" ..... "	Int.	120	
200	Smart..... "	533	Shellville Junc... "	" ..... "	F. I.	270	Applies only as proportional rate on shipments destined points on Cal.-N. W. Ry.
201	Yuba Pass.... "	141	Sacramento..... "	" per group 14 "	Int.	225	
		1	San Francisco... "				
		4	Oakland..... "	Sawdust..... "	Int.	225	
		33	San Jose..... "				
218	Truckee..... "						Minimum weight: 10 tons per car not over 30 ft. in length. 14 tons per car not over 34 feet in length. 15 tons per car not over 36 feet in length.
		71	Hercules..... "	" ..... "	N. I.	235	Minimum weight: 24,000 lbs.

Station No.	FROM	Station Nr.	TO	ON	Application.	Rate in Cents per Ton of 2,000 Lbs., Except as shown.	REMARKS
		107	Points on S. P. Co.'s Main Line and Branches south of Stockton to and including Los Angeles, Cal.	Lumber, Box Shooks and Doors	Int.	....	Red Bluff rates as current from time to time will apply.
218	Truckee.....Cal.	107	Stockton.....Cal.	Sawdust ..... C. L.	Int.	225	Minimum weight: 10 tons per car not over 30 ft. in length. 14 tons per car not over 34 feet in length. 15 tons per car not over 36 feet in length.
		141	Sacramento..... "				
		194	Towle..... "	" ..... "	Int.	150	
						Car	
218	" ..... " (Old Pat Henry Yard.).....	218	Truckee Lumber Co.'s Yard....Cal.	Lumber..... "	Int.	250	Regardless of wt.
						Ton	
				" ..... "	Int.	50	
		223	Boca..... "	Sawdust..... "	Int.	50	
		238	Reno.....Nev.	Lumber, Green..... "	Int.	160	
		533	Shellville Junc. Cal	Lumber..... "	F. I.	340	Applies only as proportional rate on shipments destined points on Cal. N. W. Ry.
		716	Armona..... "	Box Shooks ..... "	Int.	510	
		717	Goshen Junc.... "	" " ..... "	Int.	510	
		719	Hanford..... "	" " ..... "	Int.	510	
		721	Lemoore..... "	" " ..... "	Int.	530	
		730	Visalia..... "	" " ..... "	Int.	540	
		766	Fresno..... "	" " ..... "	Int.	400	
		771	Clovis..... "	" " ..... "	Int.	400	
		783	Sanger..... "	" " ..... "	Int.	400	
		785	Fortuna..... "	" " ..... "	Int.	410	
		788	Reedley..... "	" " ..... "	Int.	420	
		789	Dinuba..... "	" " ..... "	Int.	430	
		790	Monson..... "	" " ..... "	Int.	440	
218	Truckee.....Cal.	791	Tauruss..... "	" " ..... "	Int.	450	
		793	Kaweah..... "	" " ..... "	Itn.	460	
		794	Exeter..... "	" " ..... "	Int.	470	
		795	Lindsay..... "	" " ..... "	Int.	480	
		796	Santos..... "	" " ..... "	Int.	490	
		799	Porterville..... "	" " ..... "	Int.	500	
		802	Terra Bella ..... "	" " ..... "	Int.	515	
		803	Orris..... "	" " ..... "	Int.	530	
		804	Jasmin..... "	" " ..... "	Int.	545	
		807	Malaga..... "	" " ..... "	Int.	410	
		809	Fowler..... "	" " ..... "	Int.	430	
		810	Selma..... "	" " ..... "	Int.	450	
		811	Kingsburg..... "	" " ..... "	Int.	470	
		812	Traver..... "	" " ..... "	Int.	490	
		815	Tulare..... "	" " ..... "	Int.	540	
		822	Famoso..... "	" " ..... "	Int.	560	
		824	Jewetta..... "	" " ..... "	Int.	580	
		831	Bakersfield..... "	" " ..... "	Int.	595	
		875	Saugus..... "	" " ..... "	Int.	600	
		891	Chatsworth Park "				

Station No.	FROM	Station No.	TO	ON	Application.	Rate in Cents per Ton of 2,000 Lbs., Except as shown.	REMARKS
		894	Los Angeles....Cal.				
		908	Santa Monica... "				
		923	Long Beach..... "				
		926	San Pedro..... "				
		937	Whittier..... "				
		946	Los Alamitos.... "				
		953	Tustin..... "				
		961	Newport Beach.. "				
		957	Santa Ana..... "				
		965	Smeltzer..... "	Box Shooks.....C. L.	Int.	600	
		972	Pasadena..... "				
		984	Duarte..... "				
		1000	Lordsburg..... "				
218	Truckee.....Cal.	1007	Chino..... "				
		1021	Riverside..... "				
		1022	San Bernandino. "				
		1031	Crafton..... "				
		1227	Los Gatos..... "				
		1273	Santa Cruz..... "	Box Stuff..... "	Int.	500	
		1319	San Luis Obispo. "	Lumber, per group 13, "	Int.	600	
		1335	Surf..... "				
		1354	Elwood..... "	Box Shooks..... "	Int.	600	
		1378	Nordhoff..... "				
221	Martis..... "	553	Shellville Junc... "	Lumber..... "	F. I.	340	Applies only as proportional rate on shipments destined points Cal.-N. W. Ry.
222	Prosser Creek.. "						
		1	San Francisco... "				Minimum weight: 10 tons per car not over 30 feet in length. 14 tons per car not over 34 feet in length. 15 tons per car not over 36 feet in length.
		4	Oakland..... "				
		33	San Jose..... "	Sawdust..... "	Int.	225	
		107	Stockton..... "				
		133	Ione..... "	Timber, Mining..... "	Int.	360	
		141	Sacramento..... "	Sawdust..... "	Int.	225	Minimum weight: 10 tons per car not over 30 feet in length. 14 tons per car not over 34 feet in length. 15 tons per car not over 36 feet in length.
223	Boca..... "						
		164	Milton..... .....Cal.	Timber, Mining..... "	Int.	360	
		169	Placerville..... "	" " ..... "	Int.	360	
		218	Truckee..... "	Lumber..... "	Int.	40	
		238	Reno.....Nev.	" per group 14, "	Int.	150	
		454	Anderson.....Cal.	" ..... "	Int.	225	To be manufactured and re-shipped.
224	Burckhalter.. "	533	Shellville Junc,.. "	Lumber..... "	F. I.	340	Applies only as proportional rate on shipments destined points on Cal.-N. W. Ry.
227	Floriston..... "						
		218	Truckee..... "	" and Boxstuff... "	Int.	75	
229	Linham..... "	222	Prosser Creek .. "	Sawdust..... "	Int.	50	
		223	Boca..... "				
		1	San Francisco... "	Sawdust ..... "	Int.	300	
234	Verdi.....Nev.	33	San Jose..... "	" ..... "	Int.	300	
		71	Hercules..... "	" ..... "	N. I.	235	Minimum weight; 24,000 lbs.

Station No.	FROM	Station No.	TO	ON	Application.	Rate in Cents per Ton of 2,000 Lbs., Except as shown.	REMARKS
		223	Boca.....Cal.	Box Shooks.....C. L.	Int.	75	
		228	Mystic.....Nev.	Lumber..... "	Int.	50	Cars loaded to capacity but not less than 20 tons. Minima: 25 foot car, 10 cords; over 30 feet but not exceeding 34 feet 13 cords. Applies only as proportional rate on shipments destined points on Cal.-N. W. Ry.
						Card	
		238	Reno..... "	Posts, Cedar..... "	Int.	100	
						Ton	
		532	Shellville Junc..Cal.	Lumber..... "	F. I.	370	
		716	Armona..... "	Box Shooks ..... "	Int.	545	
		717	Goshen Junc.... "	" " ..... "	Int.	545	
		719	Hanford..... "	" " ..... "	Int.	545	
		721	Lemoore..... "	" " ..... "	Int.	565	
		730	Visalia..... "	" " ..... "	Int.	565	
		766	Fresno..... "	" " ..... "	Int.	425	
		771	Clovis..... "	" " ..... "	Int.	425	
		783	Sanger..... "	" " ..... "	Int.	425	
		785	Fortuna..... "	" " ..... "	Int.	435	
		788	Reedley..... "	" " ..... "	Int.	445	
		789	Dinuba..... "	" " ..... "	Int.	455	
		790	Monson..... "	" " ..... "	Int.	465	
		791	Taurusa..... "	" " ..... "	Int.	475	
		793	Kaweah..... "	" " ..... "	Int.	485	
		794	Exeter..... "	" " ..... "	Int.	495	
		795	Lindsay..... "	" " ..... "	Int.	505	
		796	Santos..... "	" " ..... "	Int.	515	
		799	Porterville..... "	" " ..... "	Int.	525	
		802	Terra Bella..... "	" " ..... "	Int.	540	
		803	Orris..... "	" " ..... "	Int.	555	
234	Verdi.....Nev.	804	Jasmin..... "	" " ..... "	Int.	570	
		807	Malaga..... "	" " ..... "	Int.	435	
		809	Fowler..... "	" " ..... "	Int.	455	
		810	Selma..... "	" " ..... "	Int.	475	
		811	Kingsburg..... "	" " ..... "	Int.	495	
		812	Traver..... "	" " ..... "	Int.	515	
		815	Tulare..... "	" " ..... "	Int.	565	
		822	Famoso..... "	" " ..... "	Int.	600	
		824	Jewetta..... "				
		831	Bakersfield..... "				
		875	Saugus..... "				
		894	Los Angeles..... "				
		908	Santa Monica.... "				
		923	Long Beach..... "				
		926	San Pedro..... "				
		937	Whittier..... "				
		946	Los Alamitos.... "				
		953	Tustin..... "	" " ..... "	Int.	600	
		957	Santa Ana..... "				
		961	Newport Beach.. "				
		965	Smeltzer..... "				
		972	Pasadena..... "				
		984	Duarte..... "				
		1000	Lordsburg..... "				
		1007	Chino..... "				
		1021	Riverside..... "				
		1022	San Bernardino . "				
		1031	Crafton..... "				
		1319	San Luis Obispo. "	Lumber, per group 13, "	Int.	600	
		1335	Surf..... "				
		1354	Elwood..... "	Box Shooks ..... "	Int.	600	

Station No.	FROM	Station No.	TO	ON	Application.	Rate in Cents per Ton of 2,000 Lbs., Except as shown.	REMARKS
		1	San Francisco...Cal.	Box Shooks .....C. L.	F. I.	340	
		2	Oakland Wharf.. "				
		3	West Oakland... "				
		4	Oakland..... "				
		10	Fruitvale..... "	" " ..... "	F. I.	375	Applies Fruitvale, San Jose and points between.
		33	San Jose..... "	" " ..... "	F. I.	375	Applies Fruitvale, San Jose and points between
		107	Stockton..... "	" " ..... "	F. I.	370	
		175	Rocklin..... "	Boxstuff ..... "	Int.	200	
		240	Sparks.....Nev.	Lumber..... "	Int	25	To be used only as proportional rate on shipments originating points west of Reno.
		533	Shellville June..Cal.	" ..... "	F. I.	380	Applies only as proportional rate on shipments destined points on Col. R. W. Ry.
		581	Vacaville..... "	Box Shooks ..... "	F. I.	450	
		581	Points north of Vacaville to Winters,	" " ..... "	F. I.	500	
		586	inclusive.....Cal.				
		524	Suisun..... "				
			Dixon..... "	" "	F. I.	430	
		601	and points between	"			
		716	Armona..... "				
		717	Goshen June.... "	" " ..... "	Int.	555	
		719	Hanford..... "				
238	Reno.....Nev.	721	Lemoore..... "	" " ..... "	Int.	575	
		730	Visalia..... "				
		766	Fresno..... "	" " ..... "	Int.	435	
				Raisin Trays, K. D. ... "	Int.	500	
		767	Barton..... "	" " " ... "	Int.	500	
		768	Las Palmas..... "	" " " ... "	Int.	500	
		771	Clovis..... "	Box Shooks..... "	Int.	435	
				" " ..... "	Int.	435	
		783	Sanger..... "	Raisin Trays, K. D. ... "	Int.	500	
		785	Fortuna..... "	Box Shooks ..... "	Int.	445	
		788	Reedley..... "	" " ..... "	Int.	455	
		789	Dinuba..... "	" " ..... "	Int.	465	
		790	Monson..... "	" " ..... "	Int.	475	
		791	Taurusa..... "	" " ..... "	Int.	485	
		793	Kaweah..... "	" " ..... "	Int.	495	
		794	Exeter..... "	" " ..... "	Int.	505	
		795	Lindsay..... "	" " ..... "	Int.	515	
		796	Santos..... "	" " ..... "	Int.	525	
		799	Porterville..... "	" " ..... "	Int.	535	
		802	Terra Bella ..... "	" " ..... "	Int.	550	
		803	Orris..... "	" " ..... "	Int.	565	
		804	Jasmin..... "	" " ..... "	Int.	580	
		807	Malaga..... "	" " ..... "	Int.	445	
		809	Fowler..... "	" " ..... "	Int.	465	
		810	Selma..... "	" " ..... "	Int.	485	
		811	Kingsburg..... "	" " ..... "	Int.	505	
		812	Traver..... "	" " ..... "	Int.	525	
		815	Tulare..... "	" " ..... "	Int.	575	
		822	Famoso..... "	" " ..... "	Int.	600	

Station No.	FROM	Station No.	TO	ON	Application.	Rate in Cents per Ton of 2,000 Lbs., Except as Shown.	REMARKS
		824	Jewetta.....Cal.				
		831	Bakersfield..... "				
		875	Saugus..... "				
		894	Los Angeles..... "				
		908	Santa Monica.... "				
		923	Long Beach..... "				
		926	San Pedro..... "				
		937	Whittier..... "				
		946	Los Alamitos.... "				
		953	Tustin..... "				
		957	Santa Ana..... "	Box Shooks .....C. L.	Int.	600	
		961	Newport Beach.. "				
		965	Smeltzer..... "				
		972	Pasadena..... "				
		984	Duarte..... "				
		1000	Lordsburg..... "				
		1007	Chino..... "				
		1021	Riverside..... "				
		1022	San Bernardino. "				
		1031	Crafton..... "				
238	Reno.....Nev.	1219	Santa Clara..... "	" " ..... "	F. I.	375	
		1223	Campbell..... "	" " ..... "	F. I.	400	
		1230	Wright..... "	" " ..... "	F. I.	450	
		1260	Aromas..... "				
		1261	Vega..... "	" " ..... "	F. I.	425	
		1263	Watsonville..... "				
		1270	Capitola..... "				
		1273	Santa Cruz..... "	" " ..... "	F. I.	450	
		1280	Monterey..... "				
		1285	Salinas..... "				
		1335	Surf..... "	" " ..... "	F. I.	600	Applicable, Salinas, Surf and points between.
		1354	Elwood..... "	" " ..... "	Int.	600	
		1378	Nordhoff..... "	" Stuff..... "	Int.	600	
			For other rates from	Reno see last page of Special			
412	Marysville....Cal.	421	Oroville.....Cal.	Lumber, per group 14,C. L.	N. I.	180	Applies when destined to points beyond, via Marysville.
			For other rates from	Marysville see last page of Special.			
		71	Hercules.....Cal.	Sawdust.....C. L.	N. I.	180	
		141	Sacramento..... "	" ..... "	Int.	170	
		533	Shellville Junc... "	Lumber..... "	F. I.	270	Applies only as proportional rate on shipments destined points on Cal.-N. W. Ry.
		766	Fresno..... "	Box Shooks ..... "	Int.	400	
		716	Armona..... "	" " ..... "	Int.	510	
432	Chico. ..... "	717	Goshen Junction. "	" " ..... "	Int.	510	
		719	Hanford..... "	" " ..... "	Int.	510	
		721	Lemoore..... "	" " ..... "	Int.	530	
		730	Visalia..... "	" " ..... "	Int.	540	
		771	Clovis..... "	" " ..... "	Int.	400	

Station No.	FROM	Station No.	TO	ON	Application.	Rate in Cents per Ton of 2,000 Lbs., Except as shown.	REMARKS
		783	Sanger.....Cal.	Box Shooks .....C. L.	Int.	400	
		785	Fortuna..... "	" " ..... "	Int.	410	
		788	Reedley..... "	" " ..... "	Int.	420	
		789	Dinuba ..... "	" " ..... "	Int.	430	
		790	Monson..... "	" " ..... "	Int.	440	
		791	Taurusa..... "	" " ..... "	Int.	450	
		793	Kaweah..... "	" " ..... "	Int.	460	
		794	Exeter..... "	" " ..... "	Int.	470	
		795	Lindsay..... "	" " ..... "	Int.	480	
		796	Santos..... "	" " ..... "	Int.	490	
		799	Porterville..... "	" " ..... "	Int.	500	
		802	Terra Bella ..... "	" " ..... "	Int.	515	
		803	Orris..... "	" " ..... "	Int	530	
		804	Jasmin..... "	" " ..... "	Int.	545	
		807	Malaga..... "	" " ..... "	Int.	410	
		809	Fowler..... "	" " ..... "	Int.	430	
		810	Selma..... "	" " ..... "	Int.	450	
		811	Kingsburg..... "	" " ..... "	Int.	470	
432	Chico.....Cal.	812	Traver..... "	" " ..... "	Int.	490	
		815	Tulare..... "	" " ..... "	Int.	540	
		822	Famoso..... "	" " ..... "	Int.	560	
		824	Jewetta..... "	" " ..... "	Int.	580	
		831	Bakersfield..... "	" " ..... "	Int.	595	
		875	Saugus..... "				
		891	Chatsworth Park "				
		894	Los Angeles..... "				
		908	Santa Monica..... "				
		923	Long Beach..... "				
		926	San Pedro..... "				
		937	Whittier..... "				
		946	Los Alamitos..... "				
		953	Tustin..... "				
		957	Santa Ana..... "				
		961	Newport Beach.. "	" " ..... "	Int.	600	
		965	Smeltzer..... "				
		972	Pasadena..... "				
		984	Duarte..... "				
		1000	Lordsburg..... "				
		1007	Chino..... "				
		1021	Riverside..... "				
		1022	San Bernardino . "				
		1031	Crafton..... "				
		1227	Los Gatos..... "				
		1319	San Luis Obispo. "	Lumber, per group 13, "	Int.	600	
		1335	Surf..... "				
		1354	Elwood..... "	Box Shooks ..... "	Int.	600	
		1378	Nordhoff..... "	" " ..... "	Int.	600	

Station No.	FROM	Station No.	TO	ON	Application.	Rate in Cents per Ton of 2,000 Lbs., Except as shown.	REMARKS
		533	Shellville June..Cal.	Lumber.....C. L.	F. I.	270	Applies only as proportional rate on shipments destined points on Cal.-N. W. Ry.
		716	Armona..... "	Box Shooks ..... "	Int.	510	
		717	Goshen Junction. "	" " ..... "	Int.	510	
		719	Hanford..... "	" " ..... "	Int.	510	
		721	Lemoore..... "	" " ..... "	Int.	530	
		730	Visalia..... "	" " ..... "	Int.	540	
		766	Fresno..... "	" " ..... "	Int.	400	
		771	Clovis..... "	" " ..... "	Int.	400	
		783	Sanger..... "	" " ..... "	Int.	400	
		785	Fortuna..... "	" " ..... "	Int.	410	
		788	Reedley..... "	" " ..... "	Int.	420	
		789	Dinuba..... "	" " ..... "	Int.	430	
		790	Monson..... "	" " ..... "	Int.	440	
		791	Taurusa..... "	" " ..... "	Int.	450	
		793	Kaweah..... "	" " ..... "	Int.	460	
		794	Exeter..... "	" " ..... "	Int.	470	
		795	Lindsay..... "	" " ..... "	Itn.	480	
		796	Santos..... "	" " ..... "	Int.	490	
		799	Porterville..... "	" " ..... "	Int.	500	
		802	Terra Bella..... "	" " ..... "	Int.	515	
		803	Orris..... "	" " ..... "	Int.	530	
		804	Jasmin..... "	" " ..... "	Int.	545	
		807	Malaga..... "	" " ..... "	Int.	410	
		809	Fowler..... "	" " ..... "	Int.	430	
		810	Selma.. "	" " ..... "	Int.	450	
		811	Kingsburg..... "	" " ..... "	Int.	470	
		812	Traver..... "	" " ..... "	Int.	490	
		815	Tulare..... "	" " ..... "	Int.	540	
447	Red Bluff.....Cal.	822	Famoso..... "	" " ..... "	Int.	560	
		824	Jewetta..... "	" " ..... "	Int.	580	
		831	Bakersfield..... "	" " ..... "	Int.	595	
		875	Saugus..... "	" " ..... "	Int.	600	
		891	Chatsworth Park "	" " ..... "	Int.	600	
		894	Los Angeles..... "	Doors, Sash, Blinds.... "	Int.	675	Minimum weight 12 tons.
		894	Los Angeles....Cal.				
		908	Santa Monica... "				
		923	Long Beach .... "				
		926	San Pedro..... "				
		937	Whittier..... "				
		946	Los Alamitos.. "				
		953	Tustin..... "				
		957	Santa Ana..... "				
		961	Newport Beach.... "	Box Shooks..... "	Int.	600	
		965	Smeltzer..... "				
		972	Pasadena..... "				
		984	Duarte..... "				
		1000	Lordsburg..... "				
		1007	Chino..... "				
		1021	Riverside..... "				
		1022	San Bernardino.. "				
		1031	Crafton..... "				
		1227	Los Gatos..... "				
		1273	Santa Cruz..... "	Lumber..... "	Int.	500	
		1319	San Luis Obisjo . "	" per group 13 "	Int.	600	(Via San Jose.)
		1335	Surf..... "				
		1354	Elwood..... "	Box Shooks..... "	Int.	600	
		1378	Nordhoff..... "				
			For other rates from	Red Bluff See last page of Special.			

Station No.	FROM	Station No.	TO	ON	Application	Rate in Cents per Ton of 2,000 Lbs., Except as shown.	REMARKS
453	Cottonwood..Cal.	533	Shellville Junc..Cal.	Lumber.....C. L.	F. I.	300	Applies only as proportional rate on shipments destined points Cal.-N. W. Ry.
		407	Lincoln..... "	Timbers, Mining..... "	Int.	225	
		464	Kennet..... "	" " ..... "	Int.	120	Applies only as proportional rate on shipments destined points on Cal.-N. W. Ry.
		533	Shellville Junc... "	Lumber..... "	F. I.	300	
		716	Armona..... "	Box Shooks..... "	Int.	535	
		717	Goshen Junction. "	" " ..... "	Int.	535	
		719	Hanford..... "	" " ..... "	Int.	535	
		721	Lemoore..... "	" " ..... "	Int.	555	
		730	Visalia..... "	" " ..... "	Int.	565	
		766	Fresno..... "	" " ..... "	Int.	425	
		771	Clovis..... "	" " ..... "	Int.	425	
		783	Sanger..... "	" " ..... "	Int.	425	
		785	Fortuna..... "	" " ..... "	Int.	435	
		788	Reedley..... "	" " ..... "	Int.	445	
		789	Dinuba..... "	" " ..... "	Int.	455	
		790	Monson..... "	" " ..... "	Int.	465	
		791	Taurusa..... "	" " ..... "	Int.	475	
		793	Kaweah..... "	" " ..... "	Int.	485	
		794	Exeter..... "	" " ..... "	Int.	495	
		795	Lindsay..... "	" " ..... "	Int.	505	
		796	Santos..... "	" " ..... "	Int.	515	
		799	Porterville..... "	" " ..... "	Int.	525	
		802	Terra Bella..... "	" " ..... "	Int.	540	
		803	Orris..... "	" " ..... "	Int.	555	
		804	Jasmin..... "	" " ..... "	Int.	570	
		807	Malaga..... "	" " ..... "	Int.	435	
454	Anderson.....	809	Fowler..... "	" " ..... "	Int.	455	
		810	Selma..... "	" " ..... "	Int.	475	
		811	Kingsburg..... "	" " ..... "	Int.	495	
		812	Traver..... "	" " ..... "	Int.	515	
		815	Tulare..... "	" " ..... "	Int.	565	
		822	Famoso..... "	" " ..... "	Int.	585	
		824	Jewetta..... "	" " ..... "	Int.	605	
		831	Bakersfield..... "	" " ..... "	Int.	620	
		875	Saugus..... "	" " ..... "	Int.	625	
		891	Chatsworth Park "	" " ..... "	Int.	625	
		894	Los Angeles..... "				
		908	Santa Monica... "				
		923	Long Beach..... "				
		926	San Pedro..... "				
		937	Whittier..... "				
		946	Los Alamitos.... "				
		953	Tustin..... "				
		957	Santa Ana..... "				
		961	Newport Beach.. "	" " ..... "	Int.	625	
		965	Smeltzer..... "				
		972	Pasadena..... "				
		984	Duarte..... "				
		1000	Lordsburg..... "				
		1007	Chino..... "				
		1021	Riverside..... "				
		1022	San Bernardino. "				
		1031	Crafton..... "				
		1227	Los Gatos..... "				

Station No.	FROM	Station No.	TO	ON	Application	Rate in Cents per Ton of 2,000 Lbs., *Except as shown.	REMARKS
454	Anderson ..... Cal.	1319	San Luis Obispo. Cal.	Lumber, per group 13, C. L.	Int.	625	
		1335	Surf ..... "				
		1354	Elwood..... "	Box Shooks ..... "	Int.	625	
		1378	Nordhoff..... "	" " ..... "	Int.	625	
459	Redding..... "	533	Shellville Junc... "	Lumber..... "	F. I.	340	Applies only as proportional rate on shipments destined points on Cal.-N. W. Ry.
		1	San Francisco... "	Sawdust..... "	Int.	225	Minimum weight: 10 tons per car not over 30 feet in length. 14 tons per car not over 34 feet in length. 15 tons per car not over 36 feet in length.
		4	Oakland..... "				
		33	San Jose..... "				
		107	Stockton..... "				
		141	Sacramento..... "				
		4	Oakland..... "	Box Shooks..... "	Int.	370	
		23	Hayward..... "	" " ..... "	Int.	370	
		33	San Jose..... "	" " ..... "	Int.	370	
		91	San Ramon .... "	" " ..... "	Int.	450	
		97	Antioch..... "	" " ..... "	Int.	370	
		107	Stockton..... "	" " ..... "	Int.	300	
		113	Lodi..... "	" " ..... "	Int.	300	
		141	Sacramento..... "	" " ..... "	Int.	250	
		169	Placerville..... "	" " ..... "	Int.	550	
		178	Newcastle..... "	" " ..... "	Int.	3.0	
		187	Colfax..... "	" " ..... "	Int.	460	
		412	Marysville..... "	" " ..... "	Int.	230	
		421	Oroville..... "	" " ..... "	Int.	250	
		552	Santa Rosa..... "	" " ..... "	Int.	370	
471	Lamoine.....	576	Calistoga..... "	" " ..... "	Int.	370	
		581	Vacaville..... "	" " ..... "	Int.	430	
		599	Rumsey..... "	" " ..... "	Int.	500	
		611	Woodland..... "	" " ..... "	Int.	250	
		637	Colusa Junction.. "	" " ..... "	Int.	250	
		730	Visalia..... "	" " ..... "	Int.	570	
		748	Merced..... "	" " ..... "	Int.	430	
		766	Fresno..... "	" " ..... "	Int.	430	
		788	Reedley..... "	" " ..... "	Int.	450	
		799	Porterville..... "	" " ..... "	Int.	530	
		831	Bakersfield..... "	" " ..... "	Int.	597½	
		894	Los Angeles..... "	" " ..... "	Int.	625†	
		957	Santa Ana..... "	" " ..... "	Int.	625	
		1018	Colton..... "	" " ..... "	Int.	625	
		1021	Riverside..... "	" " ..... "	Int.	625	
		1028	Redlands..... "	" " ..... "	Int.	625	
		1036	Beaumont..... "	" " ..... "	Int.	800	
		1037	Banning..... "	" " ..... "	Int.	800	
		1263	Watsonville..... "	" " ..... "	Int.	525	
		1319	San Luis Obispo. "	" " ..... "	Int.	625	
		1335	Surf..... "	" " ..... "	Int.	625	
		1359	Santa Barbara.. "	" " ..... "	Int.	625	
		503	Weed..... "	Ties..... "	Int.	100	
479	Castella..... "	533	Shellville Junc... "	Lumber..... "	F. I.	450	Applies only as proportional rate on shipments destined points on Cal.-N. W. Ry.
			For other rates from Castella see last page of Special				

Station No.	FROM	Station No.	TO	ON	Application.	Rate in Cents per Ton of 2,000 Lbs., Except as shown.	REMARKS
485	Dunsmuir . . .Cal.	481	Keswick.....Cal.	Timbers, Mining.....C. L.	Int.	120	
		1	San Francisco... "				Minimum weight: 10 tons per car not over 30 feet in length. 14 tons per car not over 34 feet in length. 15 tons per car not over 36 feet in length.
		4	Oakland'..... "				
490	Cantara..... "						
		33	San Jose..... "	Sawdust..... "	Int.	225	
493	Pioneer..... "						
		107	Stockton..... "				
		141	Sacramento..... "				
		716	Armona..... "	Box Shooks ..... "	Int.	570	
		717	Goshen Junction. "	" " ..... "	Int.	570	
		719	Hanford..... "	" " ..... "	Int.	570	
		721	Lemoore..... "	" " ..... "	Int.	590	
		730	Visalia..... "	" " ..... "	Int.	600	
		766	Fresno..... "	" " ..... "	Int.	460	
		771	Clovis..... "	" " ..... "	Int.	460	
		783	Sanger..... "	" " ..... "	Int.	460	
		785	Fortuna..... "	" " ..... "	Int.	470	
		788	Reedley..... "	" " ..... "	Int.	480	
		789	Dinuba..... "	" " ..... "	Int.	490	
		790	Monson..... "	" " ..... "	Int.	500	
		791	Taurusa..... "	" " ..... "	Int.	510	
		793	Kaweah..... "	" " ..... "	Int.	520	
		794	Exeter..... "	" " ..... "	Int.	530	
		795	Lindsay..... "	" " ..... "	Int.	540	
		796	Santos..... "	" " ..... "	Int.	550	
		799	Porterville..... "	" " ..... "	Int.	560	
		802	Terra Bella..... "	" " ..... "	Int.	575	
		803	Orris..... "	" " ..... "	Int.	590	
493	Pioneer..... "	804	Jasmin..... "	" " ..... "	Int.	600	
		807	Malaga..... "	" " ..... "	Int.	470	
		809	Fowler..... "	" " ..... "	Int.	490	
		810	Selma..... "	" " ..... "	Int.	510	
		811	Kingsburg..... "	" " ..... "	Int.	530	
		812	Traver..... "	" " ..... "	Int.	550	
		815	Tulare..... "	" " ..... "	Int.	600	
		822	Famoso..... "	" " ..... "	Int.	600	
		824	Jewetta..... "	" " ..... "	Int.	600	
		831	Bakersfield..... "	" " ..... "	Int.	600	
		875	Saugus..... "	" " ..... "	Int.	650	
		894	Los Angeles..... "				
		908	Santa Monica ... "				
		923	Long Beach..... "				
		926	San Pedro..... "				
		937	Whittier..... "				
		946	Los Alamitos.... "	" " ..... "	Int.	650	
		953	Tustin..... "				
		957	Santa Ana..... "				
		961	Newport Beach.. "				
		965	Smeltzer..... "				
		972	Pasadena..... "				
		984	Duarte..... "				

Station No.	FROM	Station No.	TO	ON	Application.	Rates in Cents per Ton of 2,000 Lbs., Except as shown.	REMARKS
		1000	Lordsburg .....Cal.				
		1007	Chino..... "				
		1021	Riverside..... "	Box Shooks .....C. L.	Int.	650	
		1022	San Bernardino . "				
		1031	Crafton..... "				
493	Pioneer.....Cal.						
		1227	Los Gatos..... "	" " ..... "	Int.	650	
		1354	Elwood..... "	" " ..... "	Int.	650	
		1378	Nordhoff ..... "				
494	Barnard..... "	503	Weed..... "	Ties..... "	Int.	56	
		1	San Francisco... "				Minimum weight: 10 tons per car not over 30 feet in length. 14 tons per car not over 34 feet in length. 15 tons per car not over 36 feet in length.
		4	Oakland..... "				
		33	San Jose..... "	Sawdust.....C. L.	Int.	225	
		107	Stockton..... "				
		141	Sacramento..... "				
		407	Lincoln..... "	" " ..... "	Int.	150	
		454	Anderson..... "	Lumber..... "	Int.	150	Applies on Lumber to be manufactured and reshipped.
		461	Keswick..... "	Lumber and Ties..... "	Int.	240	
		533	Shellville Junc... "	" ..... "	F. I.	450	Applies only as proportional rate on shipments destined points on Cal.-N. W. Ry.
		716	Armona..... "	Box Shooks ..... "	Int.	570	
		717	Goshen Junction. "	" " ..... "	Int.	570	
		719	Hanford..... "	" " ..... "	Int.	570	
		721	Lemoore..... "	" " ..... "	Int.	590	
		730	Visalia..... "	" " ..... "	Int.	600	
		766	Fresno..... "	" " ..... "	Int.	460	
		771	Clovis..... "	" " ..... "	Int.	460	
		783	Sanger..... "	" " ..... "	Int.	460	
		785	Fortuna..... "	" " ..... "	Int.	470	
		788	Reedley..... "	" " ..... "	Int.	480	
		789	Dinuba..... "	" " ..... "	Int.	490	
		790	Monson..... "	" " ..... "	Int.	500	
497	Upton..... "	791	Taurusa..... "	" " ..... "	Int.	510	
		793	Kaweah..... "	" " ..... "	Int.	520	
		794	Exeter..... "	" " ..... "	Int.	530	
		795	Lindsay..... "	" " ..... "	Int.	540	
		796	Santos..... "	" " ..... "	Int.	550	
		799	Porterville..... "	" " ..... "	Int.	560	
		802	Terra Bella..... "	" " ..... "	Int.	575	
		803	Orris..... "	" " ..... "	Int.	590	
		804	Jasmin ..... "	" " ..... "	Int.	600	
		807	Malaga..... "	" " ..... "	Int.	470	
		809	Fowler..... "	" " ..... "	Int.	490	
		810	Selma..... "	" " ..... "	Int.	510	
		811	Kingsburg..... "	" " ..... "	Int.	530	
		812	Traver..... "	" " ..... "	Int.	550	
		815	Tulare..... "	" " ..... "	Int.	600	
		822	Famoso..... "	" " ..... "	Int.	600	
		824	Jewetta..... "	" " ..... "	Int.	600	
		831	Bakersfield..... "	" " ..... "	Int.	600	
		875	Saugus..... "	" " ..... "	Int.	650	
		894	Los Angeles..... "				
		908	Santa Monica ... "				
		923	Long Beach..... "	" " ..... "	Int.	650	
		926	San Pedro..... "				
		937	Whittier..... "				
		946	Los Alamitos... "				

Station No.	FROM	Station No.	TO	ON	Application.	Rate in Cents per Ton of 2,000 Lbs., Except as shown.	REMARKS
		953	Tustin.....Cal.				
		957	Santa Ana..... "				
		961	Newport Beach.. "				
		965	Smeltzer..... "				
		972	Pasadena..... "				
		984	Duarte..... "	Box Shooks.....C. L.	Int.	650	
		1000	Lordsburg..... "				
		1007	Chino..... "				
497	Upton.....Cal.	1021	Riverside..... "				
		1022	San Bernardino . "				
		1031	Crafton..... "				
		1227	Los Gaots..... "	" " ..... "	Int.	650	
		1354	Elwood..... "	" " ..... "	Int.	650	
		1378	Nordhoff..... "				
			For other rates from	Upton see last page of Special			
498	Dietz..... "	461	Keswick.....Cal.	Timbers, Mining.....C. L.	Int.	150	
		1	San Francisco... "				Minimum weight: 10 tons per car not over 30 feet in length. 14 tons per car not over 34 feet in length. 15 tons per car not over 36 feet in length.
		33	San Jose..... "				
		46	Oakland..... "	Sawdust..... "	Int.	225	
		107	Stockton..... "				
		141	Sacramento..... "				
500	Igerna..... "	461	Keswick..... "	Timbers, Mining..... "	Int.	175	
		533	Shellville Junc... "	Lumber..... "	F. I.	450	Applies only as proportional rate on shipments destined points on Cal.-N. W. Ry.
		1263	Watsonville..... "				
		1273	Santa Cruz..... "	Box Stuff..... "	Int.	550	
			For other rates from	Igerna see last page of Special			
		1	San Francisco...Cal.				Minimum weight: 10 tons per car not over 30 feet in length. 14 tons per car not over 34 feet in length. 15 tons per car not over 36 feet in length.
		33	San Jose..... "				
		46	Oakland..... "	Sawdust.....C. L.	Int.	225	
		107	Stockton..... "				
		141	Sacramento..... "				
		533	Shellville Junc... "	Lumber..... "	F. I.	450	Applies only as proportional rate on shipments destined points on Cal.-N. W. Ry.
		716	Armona..... "	Box Shooks ..... "	Int.	570	
		717	Goshen Junction.. "	" " ..... "	Int.	570	
		719	Hanford..... "	" " ..... "	Int.	570	
		721	Lemoore..... "	" " ..... "	Int.	590	
		730	Visalia..... "	" " ..... "	Int.	600	
		766	Fresno..... "	" " ..... "	Int.	460	
501	Coggins..... "	771	Clovis..... "	" " ..... "	Int.	460	
		783	Sanger..... "	" " ..... "	Int.	460	
		785	Fortuna..... "	" " ..... "	Int.	470	
		788	Reedley..... "	" " ..... "	Int.	480	
		789	Dinuba..... "	" " ..... "	Int.	490	
		790	Monson..... "	" " ..... "	Int.	500	
		791	Taurusa..... "	" " ..... "	Int.	510	
		793	Kaweah..... "	" " ..... "	Int.	520	
		794	Exeter..... "	" " ..... "	Int.	530	
		795	Lindsay..... "	" " ..... "	Int.	540	
		796	Santos..... "	" " ..... "	Int.	550	
		799	Porterville..... "	" " ..... "	Int.	560	
		802	Terra Bella..... "	" " ..... "	Int.	575	
		803	Orris..... "	" " ..... "	Int.	590	
		804	Jasmin..... "	" " ..... "	Int.	600	

Station No.	FROM	Station No.	TO	ON	Application.	Rate in Cents per Ton of 2,000 Lbs., Except as shown.	REMARKS
		807	Malaga.....Cal.	Box Shooks .....C. L.	Int.	470	
		809	Fowler..... "	" " ..... "	Int.	490	
		810	Selma..... "	" " ..... "	Int.	510	
		811	Kingsburg..... "	" " ..... "	Int.	530	
		812	Traver..... "	" " ..... "	Int.	550	
		815	Tulare..... "	" " ..... "	Int.	600	
		822	Famoso..... "	" " ..... "	Int.	600	
		824	Jewetta..... "	" " ..... "	Int.	600	
		831	Bakersfield..... "	" " ..... "	Int.	600	
		875	Saugus..... "	" " ..... "	Int.	650	
		891	Chatsworth Park "	" " ..... "	Int.	650	
		894	Los Angeles..... "				
		908	Santa Monica ... "				
		923	Long Beach..... "				
		926	San Pedro..... "				
		937	Whittier..... "				
		946	Los Alamitos.. "				
		953	Tustin..... "				
		957	Santa Ana..... "				
501	Coggins .....Cal.	961	Newport Beach.. "	" " ..... "	Int.	650	
		965	Smeltzer..... "				
		972	Pasadena..... "				
		984	Duarte..... "				
		1000	Lordsburg..... "				
		1007	Chino..... "				
		1021	Riverside..... "				
		1022	San Bernardino . "				
		1031	Crafton..... "				
		1227	Los Gatos..... "	" " ..... "	Int.	650	
		1263	Watsonville..... "	Box Stuff..... "	Int.	550	
		1273	Santa Cruz..... "				
		1319	San Luis Obispo. "	Lumber, per group 13 "	Int.	650	
		1335	Surf..... "	" " "	Int.	650	
		1354	Elwood..... "	Box Shooks ..... "	Int.	650	
		1378	Nordhoff..... "	" " ..... "	Int.	650	
			Rates on Box Shooks from Coggins, Cal. will also apply		from	Weed Cal	
		1	San Francisco...Cal.				Minimum weight: 10 tons per car not over 30 feet in length. 14 tons per car not over 34 feet in length. 15 tons per car not over 36 feet in length.
		4	Oakland..... "				
		33	San Jose..... "	Sawdust.....C. L.	Int.	225	
		107	Stockton..... "				
		141	Sacramento..... "				
		120	Valley Springs... "	Mining Timbers. ..... "	Int.	412	
503	Weed..... "	133	Ione..... "	" " ..... "	Int.	400	
		493	Pioneer..... "	Lumber, per group 21, "	N. I.	56	
		1060	Brawley..... "	" " "14 "	Int.	960	
		1062	Imperial..... "		Int.	1010	
		1143	Nogales.....Ariz.	" ..... "	Int.	1350	
			Rates on Box Shooks from Coggins, Cal. will also apply		from	Weed Cal	

Station No.	FROM	Station No.	TO	ON	Application.	Rate in Cents per Ton of 2,000 Lbs., Except as shown.	REMARKS
508	Montague....Cal.	495	Sisson.....Cal.	Lumber.....C. L.	Int.	100	
		414	Gazelle.....Cal.	"	Int.	60	
509	Snowdon..... "	508	Montague..... "	" ..... "	Int.	40	Applies on Lumber to be manufactured and reshipped.
511	Thrall..... "	508	" ..... "	" Seasoned ..... "	Int.	80	
		497	Upton..... "	" " ..... "	Int.	120	
		500	Igerna..... "	Logs..... "	Int.	120	
		533	Shellville Junc... "	Lumber ..... "	F.I.	450	Applies only as proportional rate on shipments destined points on Cal.-N. W. Ry.
		716	Armona..... "	Box Shooks ..... "	Int.	595	
		717	Goshen Junction. "	" " ..... "	Int.	595	
		719	Hanford..... "	" " ..... "	Int.	595	
		721	Lemoore..... "	" " ..... "	Int.	625	
		730	Visalia..... "	" " ..... "	Int.	625	
		776	Fresno..... "	" " ..... "	Int.	485	
		771	Clovis..... "	" " ..... "	Int.	485	
		783	Sanger..... "	" " ..... "	Int.	485	
		785	Fortuna..... "	" " ..... "	Int.	495	
		788	Reedley..... "	" " ..... "	Int.	505	
		789	Dinuba..... "	" " ..... "	Int.	515	
		790	Monson..... "	" " ..... "	Int.	525	
		791	Taurusa..... "	" " ..... "	Int.	535	
		793	Kaweah..... "	" " ..... "	Int.	545	
		794	Exeter..... "	" " ..... "	Int.	555	
511	" .... "	795	Lindsay..... "	" " ..... "	Int.	565	
512	Klamathon .. "	796	Santos..... "	" " ..... "	Int.	575	
		799	Porterville..... "	" " ..... "	Int.	585	
		802	Terra Bella..... "	" " ..... "	Int.	600	
		803	Orris..... "	" " ..... "	Int.	615	
		804	Jasmin..... "	" " ..... "	Int.	630	
		807	Malaga..... "	" " ..... "	Int.	495	
		809	Fowler..... "	" " ..... "	Int.	515	
		810	Selma..... "	" " ..... "	Int.	535	
		811	Kingsburg..... "	" " ..... "	Int.	555	
		812	Traver..... "	" " ..... "	Int.	575	
		815	Tulare..... "	" " ..... "	Int.	625	
		822	Famoso..... "	" " ..... "	Int.	645	
		824	Jewetta..... "	" " ..... "	Int.	665	
		831	Bakersfield..... "	" " ..... "	Int.	675	
		875	Saugus..... "	" " ..... "	Int.	675	
		961	Newport Beach.. "	" " ..... "	Int.	675	
		1378	Nordhoff..... "	" " ..... "	Int.	675	
		894	Los Angeles..... "				
		908	Santa Monica ... "				
		923	Long Beach..... "				
		926	San Pedro..... "				
		937	Whittier..... "	" " ..... "	Int.	675	
		946	Los Alamitos.... "				
		953	Tustin..... "				
		957	Santa Ana..... "				
		965	Smeltzer..... "				
		972	Pasadena..... "				

Station No.	FROM	Station No.	TO	ON	Application	Rate in Cents per Ton of 2,000 Lbs., Except as shown.	REMARKS
		984	Duarte.....Cal.				
		1000	Lordsburg..... "				
		1007	Chino..... "				
		1021	Riverside..... "	Box Shooks.....C. L.	Int.	675	
		1022	San Bernardino . "				
		1031	Crafton..... "				
511	Thrall.....Cal.	1143	Nogales.....Ariz.	Lumber..... "	Int.	1375	
512	Klamathon... "	1227	Los Gatos. . Cal	Box Shooks..... "	Int.	600	
		1273	Santa Cruz..... "	" " ..... "	Int.	765	Minimum marked weight capacity.
		1319	San Luis Obispo. "				
		1335	Surf..... "	Lumber, per group 14 "	Int.	675	
		1337	Lompoc..... "	" " "	Int.	695	
		1354	Elwood..... "	Box Shooks ..... "	Int.	675	
516	Cole.....: "	231 to 240	Stations west of Sparks in Nev.	Lumber (all kinds, any length), Shingles, Cross Arms (Wooden), Tank Material (Wooden), Guttering (Wooden), Mining Timber, Box Shooks, Lath, Posts (Fence), Ties and Telegraph Poles straight or mixed..C. L.	Int.	800	
		4	Oakland ..... "	Lumber, per group 14, "	N. I.	120	Applicable Oakland, Market St. Hercules and points between.
		11	East Oakland... "				
		33	San Jose..... "	" " "	N. I.	150	Applicable East Oakland, San Jose, and points between, via Niles.
533	Shellville Junc "		and points between via Niles.				
		570	St. Helena.....Cal.	" " "	Int.	125	Applies only as proportional rate on shipments originating points on Cal.-N. W. Ry.
		576	Calistoga ..... "	" " "	Int.	150	
			For rates from South	Vallejo see last page of Special			
580	Elmira ..... "	590	Esparto.....Cal.	Lumber, per group 18, C.L.	Int.	175	
		586	Winters..... "	" per group 14 "	Int.	60	
		591	Capay..... "	" " "	Int.	100	
581	Vacaville..... "	592	Cadanassa..... "	" " "	Int.	115	
		593	Tancred..... "	" " "	Int.	130	
		599	Rumsey..... "	" " "	Int.	160	
611	Woodland.... "	627	Zamora..... "	" " "	Int.	80	
642	Willows..... "	646	Fruto..... "	" ..... "	Int.	100	
		1	San Francisco... "	" ..... "	Int.	320	
646	Fruto..... "	642	Willows ..... "	" ..... "	Int.	Free.	When destined East via Ogden, Mojave or El Paso.
		533	Shellville Junc... "	" ..... "	Int.	290	Applies only as proportional rate on shipments destined points on Cal.-N. W. Ry.
		761	Madera..... "	" ..... "	Int.	200	
		831	Bakersfield..... "	" ..... "	Int.	440	
		1021	Riverside..... "				
670	Oakdale..... "	1022	San Bernardino. "	" ..... "	Int.	600	
		1028	Redlands..... "				
		1060	Brawley..... "	" ..... "	Int.	960	
		1062	Imperial..... "	" ..... "	Int.	1010	
		1065	Calexico..... "	" per group 14 "	Int.	1085	
		1143	Nogales.....Ariz.	" ..... "	Int.	960	

Station No.	FROM	Station No.	TO	ON	Application.	Rate in Cents per Ton of 2,000 Lbs., Except as shown.	REMARKS
737	Modesto ....Cal.	674	Montpelier.....Ariz.	Lumber.....Cal.	Int.	185	
760	Raymond .... "	1	San Francisco...Cal.	" ..... "	Int.	320	
		894	Los Angeles..... "	" ..... "	Int.	550	
		533	Shellville Junc... "	" ..... "	E. I.	345	Applies only as proportional rate on shipments destined points on Cal.-N. W. Ry.
				Sawdust..... "	Int.	450	
						100 Lbs.	
		894	Los Angeles..... "	Sash, per group 24, L.C.L.	Int.	55	
				Frames, per group 8, L.C.L.	Int.	60	
		899	University..... "	Sash, per group 24, L.C.L.	Int.	59	
				Frames, per group 8, L.C.L.	Int.	64	
		900	Cienega..... "	Sash, per group 24, L.C.L.	Int.	60½	
				Frames, per group 8, L.C.L.	Int.	65½	
		902	Ivy..... "	Sash, per group 24, L.C.L.	Int.	62	
				Frames, per group 8, L.C.L.	Int.	67	
		906	Soldiers' Home.. "	Sash, per group 24, L.C.L.	Int.	63	
				Frames, per group 8, L.C.L.	Int.	68	
		908	Santa Monica ... "	Sash, per group 24, L.C.L.	Int.	64	
				Frames, per group 8, L.C.L.	Int.	69	
		914	Dodsworth..... "	Sash, per group 24, L.C.L.	Int.	59	
				Frames, per group 8, L.C.L.	Int.	64	
		915	Florence..... "	Sash, per group 24, L.C.L.	Int.	59	
				Frames, per group 8, L.C.L.	Int.	64	
		917	Lynwood..... "	Sash, per group 24, L.C.L.	Int.	62	
				Frames, per group 8, L.C.L.	Int.	67	
		918	Compton..... "	Sash, per group 24, L.C.L.	Int.	63	
				Frames, per group 8, L.C.L.	Int.	68	
		919	Dominguez..... "	Sash, per group 24, L.C.L.	Int.	64½	
				Frames, per group 8, L.C.L.	Int.	69½	
		920	Elftman..... "	Sash, per group 24, L.C.L.	Int.	65	
761	Madera..... "			Frames, per group 8, L.C.L.	Int.	70	
		925	Wilmington..... "	Sash, per group 24, L.C.L.	Int.	65	
				Frames, per group 8, L.C.L.	Int.	70	
		926	San Pedro..... "	Sash, per group 24, L.C.L.	Int.	67½	
				Frames, per group 8, L.C.L.	Int.	72½	
		931	Vinvale..... "	Sash, per group 24, L.C.L.	Int.	63	
				Frames, per group 8, L.C.L.	Int.	68	
		932	Downey..... "	Sash, per group 24, L.C.L.	Int.	64	
				Frames, per group 8, L.C.L.	Int.	69	
		938	Norwalk..... "	Sash, per group 24, L.C.L.	Int.	66	
				Frames, per group 8, L.C.L.	Int.	71	
		941	Almond..... "	Sash, per group 24, L.C.L.	Int.	70	
				Frames, per group 8, L.C.L.	Int.	75	
		947	Anaheim..... "	Sash, per group 24, L.C.L.	Int.	72	
				Frames, per group 8, L.C.L.	Int.	77	
		956	West Orange.... "	Sash, per group 24, L.C.L.	Int.	74	
				Frames, per group 8, L.C.L.	Int.	79	
		957	Santa Ana..... "	Sash, per group 24, L.C.L.	Int.	74	
				Frames, per group 8, L.C.L.	Int.	79	
		966	Aurant..... "	Sash, per group 24, L.C.L.	Int.	57½	
				Frames, per group 8, L.C.L.	Int.	62½	
		968	Dolgeville..... "	Sash, per group 24, L.C.L.	Int.	60	
				Frames, per group 8, L.C.L.	Int.	65	
		986	Alhambra..... "	Sash, per group 24, L.C.L.	Int.	61	
				Frames, per group 8, L.C.L.	Int.	66	
		987	San Gabriel..... "	Sash, per group 24, L.C.L.	Int.	61	
				Frames, per group 8, L.C.L.	Int.	66	

Station No.	FROM	Station No.	TO	ON	Application.	Rate in Cents per Ton of 2,000 Lbs., Except as shown.	REMARKS
						100 lbs.	
		988	Savanna .....Cal.	Sash, per group 24, L.C.L.	Int.	63	
				Frames, per group 8, L.C.L.	Int.	68	
		989	Monte.. ..... "	Sash, per group, 24 L.C.L.	Int.	63	
				Frames, per group 8, L.C.L.	Int.	68	
		1001	Puente..... "	Sash, per group 24, L.C.L.	Int.	67	
				Frames, per group 8, L.C.L.	Int.	72	
		1004	Spadra..... "	Sash, per group 24, L.C.L.	Int.	74	
				Frames, per group 8, L.C.L.	Int.	79	
		1005	Pomona..... "	Sash, per group 24, L.C.L.	Int.	76	
				Frames, per group 8, L.C.L.	Int.	81	
		1008	Ontario ..... "	Sash, per group 24, L.C.L.	Int.	87	
				Frames, per group 8, L.C.L.	Int.	84	
		1010	Cucamonga..... "	Sash, per group 24, L.C.L.	Int.	78	
				Frames, per group 8, L.C.L.	Int.	86	
		1014	Sansevain..... "	Sash, per group 24, L.C.L.	Int.	78	
				Frames, per group 8, L.C.L.	Int.	86	
		1018	Colton..... "	Sash, per group 24, L.C.L.	Int.	78	
				Frames, per group 8, L.C.L.	Int.	86	
						TON	
761	Madera.....Cal.	1060	Brawley..... "	Lumber, per group 14, C.L.	Int.	840	
		1062	Imperial..... "	" " "	Int.	890	
		1065	Calexico..... "	" " "	Int.	965	
						100 lbs.	
		1131	Rock Spur.....Ariz	" per group 20 "	Int.	42	
		1132	Grand Central... "	" " "	Int.	42	
		1133	Fairbank..... "	" " "	Int.	42	
		1134	Brookline..... "	" " "	Int.	46½	
		1135	Huachuca..... "	" " "	Int.	48½	
		1136	Elgin..... "	" " "	Int.	52½	
		1137	Sonoita..... "	" " "	Int.	55	
		1138	Crittenden..... "	" " "	Int.	56½	
		1139	Patagonia..... "	" " "	Int.	56½	
		1140	Bloxton..... "	" " "	Int.	59	
		1141	Sanford..... "	" " "	Int.	59	
		1142	Calabasas..... "	" " "	Int.	60½	
		1143	Nogales..... "	" " "	Int.	60½	
						TON	
		1143	" ..... "	" " "	Int.	860	
		1060	Brawley.....Cal.	Lumber, per group 14, C.L.	Int.	840	
		1062	Imperial..... "	" " "	Int.	890	
						100 lbs.	
		1131	Rock Spur.....Ariz.	" per group 20, "	Int.	42	
		1132	Grand Central... "	" " "	Int.	42	
		1133	Fairbank..... "	" " "	Int.	42	
		1134	Brookline..... "	" " "	Int.	46½	
		1135	Huachuca..... "	" " "	Int.	48½	
766	Fresno.....Cal.	1136	Elgin..... "	" " "	Int.	52½	
		1137	Sonoita..... "	" " "	Int.	55	
		1138	Crittenden..... "	" " "	Int.	56½	
		1139	Patagonia..... "	" " "	Int.	56½	
		1140	Bloxton..... "	" " "	Int.	59	
		1141	Sanford..... "	" " "	Int.	59	
		1142	Calabasas..... "	" " "	Int.	60½	
		1143	Nogales..... "	" " "	Int.	60½	
						TON	
		71	Hercules..... "	Sawdust..... "	Int.	235	
771	Clovis..... "	533	Shellville Junc... "	Lumber..... "	F. I.	345	Applies only as proportional rate on shipments destined points on Cal.-N. W. Ry.
		730	Farmersville... "	" ..... "	Int.	205	

	FROM	Station No.	TO	ON	Applies-tion.	Rate in Cents per Ton of 2,000 Lbs., Except as shown.	REMARKS
						100 Lbs.	
		894	Los Angeles.....Cal.	Sash, etc., per group 24 L. C. L.	Int.	55	
				Frames, per group 8, L.C.L.	Int.	60	
				Frames, per group 8, L.C.L.	Int.	64	
		899	University..... "	Trimmings, per group 9 L. C. L.	Int.	59	
				Frames, per group 8, L.C.L.	Int.	65½	
		900	Cienega..... "	Trimmings, per group 9 L. C. L.	Int.	60½	
				Frames, per group 8, L.C.L.	Int.	67	
		902	Ivy..... "	Trimmings, per group 9 L. C. L.	Int.	62	
				Frames, per group 8, L.C.L.	Int.	68	
		906	Soldiers' Home.. "	Trimmings, per group 9 L. C. L.	Int.	63	
				Frames, per group 8, L.C.L.	Int.	60	
		908	Santa Monica.... "	Trimmings, per group 9 L. C. L.	Int.	64	
		914	Dodsworth..... "	Sash, per group 24, L.C.L.	Int.	59	
				Frames, per group 8, L.C.L.	Int.	64	
				Frames, per group 8, L.C.L.	Int.	64	
		915	Florence..... "	Trimmings, per group 9 L. C. L.	Int.	59	
				Frames, per group 8, L.C.L.	Int.	67	
		917	Lynwood..... "	Trimmings, per group 9 L. C. L.	Int.	62	
				Frames, per group 8, L.C.L.	Int.	68	
		918	Compton..... "	Trimmings, per group 9 L. C. L.	Int.	63	
		919	Dominguez..... "	Frames, per group 8, L.C.L.	Int.	69½	
71	Clovis .....Cal.			Trimmings, per group 9 L. C. L.	Int.	64½	
				Frames, per group, 8 L.C.L.	Int.	70	
		920	Elftman..... "	Trimmings, per group 9 L. C. L.	Int.	65	
				Frames, per group 8, L.C.L.	Int.	70	
		925	Wilmington..... "	Trimmings, per group 9 L. C. L.	Int.	65	
				Frames, per group 8, L.C.L.	Int.	72½	
		926	San Pedro..... "	Trimmings, per group 9 L. C. L.	Int.	67½	
				Frames, pergroup 8, L.C.L.	Int.	68	
		931	Vinvale..... "	Trimmings, per group 9 L. C. L.	Int.	63	
				Frames, per group 8, L.C.L.	Int.	69	
		932	Downey..... "	Trimmings, per group 9 L. C. L.	Int.	64	
				Frames, per group 8, L.C.L.	Int.	71	
		938	Norwalk..... "	Trimmings, per group 9 L. C. L.	Int.	66	
				Frames, per group 8, L.C.L.	Int.	75	
		941	Almond..... "	Trimmings, per group 9 L. C. L.	Int.	70	
				Frames, per group 8, L.C.L.	Int.	77	
		947	Anaheim..... "	Trimmings, per group 9 L. C. L.	Int.	72	
				Frames, per group 8, L.C.L.	Int.	79	
		956	West Orange.... "	Trimmings, per group 9 L. C. L.	Int.	74	
				Frames, per group 8, L.C.L.	Int.	79	
		957	Santa Ana..... "	Trimmings, per group 9 L. C. L.	Int.	74	
		966	Aurant..... "	Sash, etc., per group 24 L. C. L.	Int.	57½	
				Frames, per group 8, L.C.L.	Int.	62½	

Station No.	FROM	Station No.	TO	ON	Application.	Rate in Cents per Ton of 2,000 Lbs., Except as shown.	REMARKS
						100 Lbs.	
		968	Dolgeville.....Cal.	Sash, etc., per group 24 L. C. L.	Int.	60	
				Frames, per group 8, L.C.L.	Int.	65	
		986	Alhambra..... "	Sash, etc., per group 24 L. C. L.	Int.	61	
				Frames, per group 8, L.C.L.	Int.	66	
		987	San Gabriel..... "	Sash, etc., per group 24 L. C. L.	Int.	61	
				Frames, per group 8, L.C.L.	Int.	66	
		988	Savanna..... "	Sash, etc., per group 24 L. C. L.	Int.	63	
				Frames, per group 8, L.C.L.	Int.	68	
		989	Monte..... "	Sash, etc., per group 24 L. C. L.	Int.	63	
				Frames, per group 8, L.C.L.	Int.	68	
		1001	Puente..... "	Sash, etc., per group 24 L. C. L.	Int.	76	
				Frames, per group 8, L.C.L.	Int.	81	
		1004	Spadi ..... "	Sash, etc., per group 24 L. C. L.	Int.	67	
				Frames, per group 8, L.C.L.	Int.	72	
		1005	Pomona..... "	Sash, etc., per group 24 L. C. L.	Int.	74	
				Frames, per group 8, L.C.L.	Int.	79	
		1008	Ontario..... "	Sash, etc., per group 24 L. C. L.	Int.	77	
				Frames, per group 8, L.C.L.	Int.	84	
		1010	Cucamonga..... "	Sash, etc., per group 24 L. C. L.	Int.	78	
	Clovis.....Cal.			Frames, per group 8, L.C.L.	Int.	86	
		1014	Sansevain..... "	Sash, etc., per group 24 L. C. L.	Int.	78	
				Frames, per group 8, L.C.L.	Int.	86	
		1018	Colton..... "	Sash etc., per group 24 L. C. L.	Int.	78	
				Frames, per group 8, L.C.L.	Int.	86	
						Ton	
		1060	Brawley..... "	Lumber, per group 14, C.L.	Int.	840	
		1062	Imperial ..... "	" " "	Int.	890	
		1065	Calexico..... "	" " "	Int.	965	
						100 Lbs.	
		1131	Rock Spur.....Ariz.	" per group 20, "	Int.	42	
		1132	Grand Central... "	" " "	Int.	42	
		1133	Fairbank..... "	" " "	Int.	42	
		1134	Brookline..... "	" " "	Int.	42	
		1135	Huachuca..... "	" " "	Int.	46½	
		1136	Elgin..... "	" " "	Int.	48½	
						52½	
		1137	Sonoita..... "	" " "	Int.	55	
		1138	Crittenden..... "	" " "	Int.	56½	
		1139	Patagonia..... "	" " "	Int.	56½	
		1140	Bloxton..... "	" " "	Int.	59	
		1141	Sanford..... "	" " "	Int.	59	
		1142	Calabasas..... "	" " "	Int.	60½	
		1143	Nogales..... "	" " "	Int.	60½	
						Ton	
		1143	" ..... "	" " "	Int.	860	
		1	San Francisco...Cal.	" ..... "	Int.	320	
		766	Fresno ..... "	" ..... "	Int.	100	
		771	Clovis..... "	" ..... "	Int.	70	
		894	Los Angeles..... "	" ..... "	Int.	550	
774	Pollasky....."	972	Pasadena..... "	" per group 14 "	Int.	550	
		1359	Santa Barbara .. "	" ..... "	Int.	550	

Station No.	FROM	Station No.	TO	ON	Application	Rate in Cents per Ton of 2,000 Lbs., Except as shown	REMARKS
		....	Mare Island.....Cal.	Lumber.....C. L.	Int.	420	Steamer proportion, $1.70. In lots of not less than two cars at one time, [illegible] at Sacramento.
		71	Hercules..... "	Sawdust..... "	Int.	235	
		533	Sheliville Junc... "	" ..... "	F. I.	345	Applies only as proportional rate on shipments destined points on Cal.-N. W. Ry.
						100 Lbs.	
		737	Modesto..... "	Blinds, per group 1, L.C.L. Sash, per group 23, L.C.L.	Int.	40	
				Blinds, per group 2 and 3, ...L. C. L.	Int.	42	
		738	Ceres..... "	Blinds, per group 1, L.C.L. Sash, per group 23, L.C.L.	Int.	37	
				Blinds, per group 2 and 3, ...L. C. L.	Int.	39	
		740	Keyes..... "	Blinds, per group 1, L.C.L. Sash, per group 23, L.C.L.	Int.	36	
				Blinds, per group 2 and 3, ...L. C. L.	Int.	38	
		741	Turlock..... "	Blinds, per Group 1, L.C.L. Sash, per Group 23, L.C.L.	Int	35	
				Blinds, per Group 2 and 3, ...L. C. L.	Int	37	
		742	Delhi..... "	Blinds, per group 1, L.C.L. Sash, per group 23, L.C.L.	Int.	34	
				Blinds, per group 2 and 3, ...L. C. L.	Int.	36	
		743	Livingston..... "	Blinds, per group 1, L.C.L. Sash, per group 23, L.C.L.	Int.	32	
				Blinds, per group 2 and 3, ...L. C. L.	Int.	34	
783	Sanger.....Cal.	744	Arena..... "	Blinds, per group 1, L.C.L. Sash, per group 23, L.C.L.	Int.	32	
				Blinds, per group 2 and 3, ...L. C. L.	Int.	34	
		745	Atwater..... "	Blinds, per group 1, L.C.L. Sash, per group 23, L.C.L.	Int.	31	
				Blinds, per group 2 and 3, ...L. C. L.	Int.	34	
		746	Buhach..... "	Blinds, per group 1, L.C.L. Sash, per group 23, L.C.L.	Int.	30	
				Blinds, per group 2 and 3, ...L. C. L.	Int.	33	
		747	Ashby..... "	Blinds, per group 1, L.C.L. Sash, per group 23, L.C.L.	Int.	29	
				Blinds, per group 2 and 3, ...L. C. L.	Int.	30	
		748	Merced..... "	Blinds, per group 1, L.C.L. Sash, per group 23, L.C.L.	Int.	28	
				Blinds, per group 2 and 3, ...L. C. L.	Int.	29	
		749	Lingard..... "	Blinds, per group 1, L.C.L. Sash, per group 23, L.C.L.	Int.	25	
				Blinds, per group 2 and 3, ...L. C. L.	Int.	28	
		750	Athlone..... "	Blinds, per group 1, L.C.L. Sash, per group 23, L.C.L.	Int.	24	
				Blinds, per group 2 and 3, ...L. C. L.	Int.	26	
		751	Sierra Vista.... "	Blinds, per group 1, L.C.L. Sash, per group 23, L.C.L.	Int.	24	
				Blinds, per group 2 and 3, ...L. C. L.	Int.	25	
		752	Minturn ..... "	Blinds, per group 1, L.C.L. Sash, per group 23, L.C.L.	Int.	23	
				Blinds, per group 2 and 3, ...L. C. L.	Int.	25	

Station No.	FROM	Station No.	TO	ON	Application	Rate in Cents per Ton of 2,000 Lbs., Except as shown.	REMARKS
						100 lbs.	
		752½	McNear.....Cal.	Blinds, per group 1, L.C.L.	Int.	23	
				Sash, per group 23, L.C.L.			
				Blinds, per group 2 and 3, ...L. C. L.	Int.	25	
		753	Califa..... "	Blinds, per group 1, L.C.L.	Int.	21	
				Sash, per group 23, L.C.L.			
				Blinds, per group 2 and 3, ...L. C. L.	Int.	22	
		754	Berenda..... "	Blinds, per group 1, L.C.L.	Int.	20	
				Sash, per group 23, L.C.L.			
				Blinds, per group 2 and 3, ...L. C. L.	Int.	21	
		761	Madera..... "	Blinds, per group 1, L.C.L.	Int.	17	
				Sash, per group 23, L.C.L.			
				Blinds, per group 2 and 3, ...L. C. L.	Int.	18	
						Car.	
		767	Maltermoro..... "	Sawdust.....C. L.	Int.	750	
						100 lbs.	
		894	Los Angeles..... "	Frames, per group 8, L.C.L.	Int.	60	
				Sash, per group 24, L.C.L.	Int.	55	
		899	University..... "	Frames, per group 8, L.C.L.	Int.	64	
				Sash, per group 24, L.C.L.	Int.	59	
		900	Cienega..... "	Frames, per group 8, L.C.L.	Int.	65½	
				Sash, per group 24, L.C.L.	Int.	60½	
		902	Ivy..... "	Frames, per group 8, L.C.L.	Int.	67	
				Sash, per group 24, L.C.L.	Int.	62	
		906	Soldiers' Home .. "	Frames, per group 8, L.C.L.	Int.	68	
				Sash, per group 24, L.C.L.	Int.	63	
		908	Santa Monica ... "	Frames, per group 8, L.C.L.	Int.	69	
783	Sanger.....Cal.			Sash, per group 24, L.C.L.	Int.	64	
		914	Dodsworth..... "	Frames, per group 8, L.C.L.	Int.	64	
				Sash, per group 24, L.C.L.	Int.	59	
		915	Florence..... "	Frames, per group 8, L.C.L.	Int.	64	
				Sash, per group 24, L.C.L.	Int.	59	
		917	Lynwood..... "	Frames, per group 8, L.C.L.	Int.	67	
				Sash, per group 24, L.C.L.	Int.	62	
		918	Compton ..... "	Frames, per group 8, L.C.L.	Int.	68	
				Sash, per group 24, L.C.L.	Int.	63	
		919	Dominguez..... "	Frames, per group 8, L.C.L.	Int.	69½	
				Sash, per group 24, L.C.L.	Int.	64½	
		920	Elftman..... "	Frames, per group 8, L.C.L.	Int.	70	
				Sash, per group 24, L.C.L.	Int.	65	
		925	Wilmington..... "	Frames, per group 8, L.C.L.	Int.	70	
				Sash, per group 24, L.C.L.	Int.	65	
		926	San Pedro..... "	Frames, per group 8, L.C.L.	Int.	72½	
				Sash, per group 24, L.C.L.	Int.	67½	
		931	Vinvale..... "	Frames, per group 8, L.C.L.	Int.	68	
				Sash, per group 24, L.C.L.	Int.	63	
		932	Downey..... "	Frames, per group 8, L.C.L.	Int.	69	
				Sash, per group 24, L.C.L.	Int.	64	
		938	Norwalk..... "	Frames, per group 8, L.C.L.	Int.	71	
				Sash, per group 24, L.C.L.	Int.	66	
		941	Almond ..... "	Frames, per group 8, L.C.L.	Int.	75	
				Sash, per group 24, L.C.L.	Int.	70	
		947	Anaheim..... "	Frames, per group 8, L.C.L.	Int.	77	
				Sash, per group 24, L.C.L.	Int.	72	
		936	West Orange..... "	Frames, per group 8, L.C.L.	Int.	79	
				Sash, per group 24, L.C.L.	Int.	74	
		957	Santa Ana..... "	Frames, per group 8, L.C.L.	Int.	79	
				Sash, per group 24, L.C.L.	Int.	74	

Studio No.	FROM	Station No.	TO	ON	Application.	Rate in Cents per Ton of 2,000 Lbs., Except as shown.	REMARKS
		965	Smeltzer.....Cal. Class D	Box Shooks.....C. L.	N. I.	550	
						100 lbs.	
		966	Aurant..... "	Frames, per group 8, L.C.L.	Int.	62½	
				Sash, per group 24, L.C.L.	Int.	57½	
		968	Dolgeville..... "	Frames, per group 8, L.C.L.	Int.	65	
				Sash, per group 24, L.C.L.	Int.	60	
		986	Alhambra..... "	Frames, per group 8, L.C.L.	Int.	66	
				Sash, per group 24, L.C.L.	Int.	61	
		987	San Gabriel..... "	Frames, per group 8, L.C.L.	Int.	66	
				Sash, per group 24, L.C.L.	Int.	61	
		988	Savanna..... "	Frames, per group 8, L.C.L.	Int.	68	
				Sash, per group 24, L.C.L.	Int.	63	
		989	Monte..... "	Frames, per group 8, L.C.L.	Int.	68	
				Sash, per group 24, L.C.L.	Int.	63	
		1001	Puente..... "	Frames, per group 8, L.C.L.	Int.	72	
				Sash, per group 24, L.C.L.	Int.	67	
		1004	Spadra..... "	Frames, per group 8, L.C.L.	Int.	79	
				Sash, per group 24, L.C.L.	Int.	74	
		1005	Pomona..... "	Frames, per group 8, L.C.L.	Int.	81	
				Sash, per group 24, L.C.L.	Int.	76	
		1008	Ontario..... "	Frames, per group 8, L.C.L.	Int.	84	
783	Sanger.....Cal.			Sash, per group 24, L.C.L.	Int.	77	
		1010	Cucamonga..... "	Frames, per group 8, L.C.L.	Int.	86	
				Sash, per group 24, L.C.L.	Int.	78	
		1014	Sansevain..... "	Frames, per group 8, L.C.L.	Int.	86	
				Sash, per group 24, L.C.L.	Int.	78	
		1018	Colton..... "	Frames, per group 8, L.C.L.	Int.	64	
				Sash, per group 24, L.C.L.	Int.	78	
						Ton.	
		1060	Brawley..... "	Lumber, Per group 14, C. L.	Int.	840	
		1062	Imperial..... "	" " "	Int.	890	
						100 lbs.	
		1131	Rock Spur.....Ariz.	" per group 20 "	Int.	42	
		1132	Grand Central... "	" " "	Int.	42	
		1133	Fairbank..... "	" " "	Int.	42	
		1134	Brookline..... "	" " "	Int.	46½	
		1135	Huachuca..... "	" " "	Int.	48½	
		1136	Elgin..... "	" " "	Int.	52½	
		1137	Sonoita..... "	" " "	Int.	55	
		1138	Crittenden..... "	" " "	Int.	56½	
		1139	Patagonia..... "	" " "	Int.	56½	
		1140	Bloxton..... "	" " "	Int.	59	
		1141	Sanford..... "	" " "	Int.	59	
		1142	Calabasas..... "	" " "	Int.	60½	
		1143	Nogales..... "	" " "	Int.	60½	
						Ton.	
		1143	Nogales..... "	" ..... "	Int.	860	
		719	Hanford.....Cal.	" ..... "	Int.	200	
795	Lindsay..... "	815	Tulare..... "	" ..... "	Int.	215	
		719	Hanford..... "	" ..... "	Int.	200	
799	Porterville.... "	783	Sanger..... "	" ..... "	Int.	150	
831	Bakersfield... "	829	Oil City..... "	" per group 14 "	Int.	50	When incidental to main line haul.
		894	Los Angeles..... "	Box Stuff..... "	Int.	425	
		961	Newport Beach "				
		965	Smeltzer..... "	" " ..... "	Int.	475	
850	Keene..... "	1021	Riverside..... "				
		1022	San Bernardino.. "	" " ..... "	Int.	425	
		1028	Redlands..... "				
		1031	Crafton..... "				

Station No.	FROM	Station No.	TO	CN	Application.	Rate in Cents per Ton of 2,000 Lbs., Except as shown.	REMARKS
		894	Los Angeles.... Cal.	Box Stuff.....C. L.	Int.	400	
859	Mojave.....Cal.	961	Newport Beach.. "	" " ..... "	Int.	400	
		965	Smeltzer..... "	" " ..... "	Int.	450	
		1021	Riverside..... "	" " ..... "	Int.	425	
891	Chatsworth Park .....Cal.	910	Port Los Angeles "	Lumber..... "	Int.	300	
		927	San Pedro Wharf "				
		893	Tropico..... "	" ..... "	Int.	50	
		906	Soldiers' Home.. "	" ..... "	Int.	120	
		1131	Rock Spur.....Ariz.	Lumber, per group 20. "	Int.	760	
		1132	Grand Central... "	" " "	Int.	760	
		1133	Fairbank..... "	" " "	Int.	760	
		1134	Brookline..... "	" " "	Int.	825	
		1135	Huachuca..... "	" " "	Int.	870	
		1136	Elgin..... "	" " "	Int.	950	
894	Los Angeles.. "	1137	Sonoita..... "	" " "	Int.	1000	Applies to intermediate points south of Benson.
		1138	Crittenden..... "	" " "	Int.	1030	
		1139	Patagonia..... "	" " "	Int.	1030	
		1140	Bloxton..... "	" " "	Int.	1080	
		1141	Sanford..... "	" " "	Int.	1080	
		1142	Calabasas..... "	" " "	Int.	1110	
		1143	Nogales..... "	" " "	Int.	1110	
				Timbers, Rough, not less than 2 inches by 6 inches or equivalent in board measure, except that Lumber 1 inch in thickness or less of any width will take rates as otherwise provided.....C. L.			
		1130	Benson..... "		N. I.	430	Minimum weight 40,000 lbs., except where cars are loaded to their full space capacity, actual weight will govern.
		1139	Patagonia..... "				
		1143	Nogales..... "				
						Car.	
897	Winthrop..... "	894	Los Angeles.... Cal.	Lumber..... "	Int.	250	Regardless of weight when destined to Points on S. P. Co.'s lines.
899	University.... "					Ton.	
906	Soldiers' Home "	894	" " ..... "	" ..... "	Int.	120	
		831	Bakersfield..... "	" per group 14, "	Int.	555	
		891	ChatsworthPark "	" ..... "	Int.	300	
		972	Pasadena..... "	" ..... "	Int.	140	
		974	North Alhambra. "	" per group 14, "	Int.	140	
		1005	Pomona..... "	" ..... "	Int.	260	
		1060	Brawley..... "	" per group 14, "	Int.	720	
		1062	Imperial..... "	" " "	Int.	770	
		1064	Heber..... "	" " "	Int.	820	
		1065	Calexico..... "	" " "	Int.	845	Applies only on shipments for the construction of bridges, trestles and railroad building account of the Arizona Southern Ry.
		1116	Red Rock.....Ariz.	" ..... "	N, I,	360	
910	Port Los Angeles"						
				Timbers, Rough, not less than 2 inches by 6 inches or equivalent in board measure, except that Lumber 1 inch in thickness or less of any width will take rates as otherwise provided.....C. L.			
		1130	Benson..... "		N. I.	430	Minimum weight 40,000 lbs., except where cars are loaded to their full space capacity, actual weight will govern.
		1139	Patagonia..... "				
		1143	Nogales..... "				
		1131	Rock Spur..... "	Lumber, per group 20, "	Int.	760	
		1132	Grand Central... "	" " "	Int.	760	Applies to intermediate points south of Benson.
		1133	Fairbank..... "	" " "	Int.	760	
		1134	Brookline..... "	" " "	Int.	825	

Station No.	FROM	Station No.	TO	ON	Application.	Rate in Cents per Ton of 2,000 Lbs., Except as shown.	REMARKS
		1135	Huachuca.....Ariz.	Lumber, per group 20, C.L.	Int.	870	
		1136	Elgin..... "	" " "	Int.	950	
		1137	Sonoita..... "	" " "	Int.	1000	
		1138	Crittenden..... "	" " "	Int.	1030	
910	Port Los Angeles	1139	Patagonia..... "	" " "	Int.	1030	Applies to intermediate points south of Benson.
	.....Cal.	1140	Bloxton..... "	" " "	Int.	1080	
		1141	Sanford..... "	" " "	Int.	1080	
		1142	Calabasas..... "	" " "	Int.	1110	
		1143	Nogales..... "	" " "	Int.	1110	
				Timber, Rough, not less than 2 inches by 6 inches or equivalent in board measure, except that lumber 1 inch in thickness or less of any width will take rates as otherwise provided C.L			
		1130	Benson.....Ariz.				Minimum weight 40,000 lbs., except where cars loaded to their full space capacity, actual weight will govern.
926	San Pedro... "	1139	Patagonia..... "		N, I,	430	
		1143	Nogales..... "				
		1130	Benson..... "				
		1139	Patagonia..... "	" " "	N, I,	430	
		1143	Nogales..... "				
		831	Bakersfield.....Cal.	Lumber, per group 14, "	Int.	535	
		880	Fernando..... "	" " "	Int.	250	
		883	Burbank..... "	" " "	Int.	140	
		892	West Glendale... "	" " "	Int.	120	
		918	Compton ..... "	" ..... "	Int.	75	
						Car, regardless of weight.	
		925	Wilmington..... "	" per group 14, "	Int.	350	Applies only on Lumber and its Products to be manufactured and reshipped.
						Ton.	
		972	Pasadena..... "	" ..... "	Int.	140	
		974	North Alahmbra "	" per group 14, "	Int.	140	
		1005	Pomona..... "	" ..... "	Int.	260	
		1060	Brawley..... "	" per group 14. "	Int.	720	
927	San Pedro Wharf "	1062	Imperial..... "	" ..... "	Int.	770	
		1064	Heber..... "	" per group 14, "	Int.	820	
		1065	Calexico..... "	" " "	Int.	845	
		891	ChatsworthPark "	" ..... "	Int.	300	Applies only on shipments for the construction of bridges, trestles and railroad building account of the Arizona Southern Ry.
		1116	Red Rock.....Ariz.	" ..... "	N, I,	360	
		1131	Rock Spur..... "	" per group 20, "	Int.	760	
		1132	Grand Central.... "	" " "	Int.	760	
		1133	Fairbank..... "	" " "	Int.	760	
		1134	Brookline..... "	" " "	Int.	825	
		1135	Huachuca..... "	" " "	Int.	870	
		1136	Elgin..... "	" " "	Int.	950	Applies to intermediate points south of Benson.
		1137	Sonoita..... "	" " "	Int.	1000	
		1138	Crittenden..... "	" " "	Int.	1030	
		1139	Patagonia..... "	" " "	Int.	1030	
		1140	Bloxton..... "	" " "	Int.	1080	
		1141	Sanford..... "	" " "	Int.	1080	
		1142	Calabasas..... "	" " "	Int.	1110	
		1143	Nogales..... "	" " "	Int.	1110	
		1143	" ..... "	" ..... "	Int.	750	
961	NewportBeach "	831	Bakersfield.....Cal.	" per group 14, "	Int.	555	
		972	Pasadena..... "	" ..... "	Int.	140	

Station No.	FROM	Station No.	TO	ON	Application.	Rate in Cents per Ton of 2,000 Lbs., Except as shown.	REMARKS
		974	North AlhambraCal	Lumber, group 14, C. L.	Int.	140	
		1001	" ..... "	" ..... "	Int.	260	
		1116	Red Rock.....Ariz.	" ..... "	N. I.	360	Applies only on shipments for the construction of bridges, trestles and railroad building account Arizona Southern Ry.
		1131	Rock Spur..... "	" per group 20 "	Int.	760	
		1132	Grand Central... "	" " "	nIt.	760	
		1133	Fairbank..... "	" " "	Int.	760	
961	Newport Beach .....Cal.	1134	Brookline..... "	" " "	Int.	825	
		1135	Huachuca..... "	" " "	Int.	870	
		1136	Elgin..... "	" " "	Int.	950	
		1137	Sonoita..... "	" " "	Int.	1000	Applies to intermediate points south of Benson.
		1138	Crittenden..... "	" " "	Int.	1030	
		1139	Patagonia..... "	" " "	Int.	1030	
		1140	Bloxton..... "	" " "	Int.	1080	
		1141	Sanford..... "	" " "	Int.	1080	
		1142	Calabasas'..... "	" " "	Int.	1110	
		1143	Nogales..... "	" " "	Int.	1110	
		1143	" ..... "	" ..... "	Int.	750	
1022	San Bernardino "	1021	Riverside..... "	Box Shooks ..... "	N. I.	100	
		1378	Nordhoff..... "	" " ..... "	Int.	600	
		1131	Rock Spur.....Ariz.	Lumber, Rough.....C. L.	Int.	160	
				" Surfaced..... "	Int.	200	
		1132	Grand Central... "	" Rough..... "	Int.	160	
				" Surfaced..... "	Int.	200	
		1133	Fairbank..... "	" Rough..... "	Int.	160	
				" Surfaced..... "	Int.	200	
		1134	Brookline..... "	" Rough..... "	Int.	192	
				" Surfaced..... "	Int.	240	
		1135	Huachuca..... "	" Rough..... "	Int.	240	
				" Surfaced..... "	Int.	300	
		1136	Elgin..... "	" Rough..... "	Int.	272	
				" Surfaced..... "	Int.	340	
1130	Benson .....Ariz.	1137	Sonoita..... "	" Rough..... "	Int.	320	
				" Surfaced..... "	Int.	400	
		1138	Crittenden..... "	" Rough..... "	Int.	352	
				" Surfaced..... "	Int.	440	
		1139	Patagonia..... "	" Rough..... "	Int.	352	
				" Surfaced..... "	Int.	440	
		1140	Bloxton..... "	" Rough..... "	Int.	384	
				" Surfaced..... "	Int.	480	
		1141	Sanford..... "	" Rough..... "	Int.	384	
				" Surfaced..... "	Int.	480	
		1142	Calabasas..... "	" Rough..... "	Int.	416	
				" Surfaced..... "	Int.	520	
		1143	Nogales..... "	" Rough..... "	Int.	448	
				" Surfaced..... "	Int.	560	
1131	Rock Spur.... "	1130	Benson ..... "	" Rough..... "	Int.	160	
				" Surfaced..... "	Int.	200	
1132	Grand Central "	1130	" ..... "	" Rough..... "	Int.	160	
				" Surfaced..... "	Int.	200	
1133	Fairbank..... "	1130	" ..... "	" Rough..... "	Int.	160	
				" Surfaced..... "	Int.	200	
1134	Brookline..... "	1130	" ..... "	" Rough..... "	Int.	192	
				" Surfaced..... "	Int.	240	

Station No.	FROM	Station No.	TO	ON	Application.	Rate in Cents per Ton of 2,000 Lbs., Except as shown.	REMARKS
1135	Huachuca...Ariz.	1130	Benson.....Ariz.	Lumber, Rough.....C. L.	Int.	240	
				" Surfaced..... "	Int.	300	
1136	Elgin..... "	1130	" ..... "	" Rough..... "	Int.	272	
				" Surfaced..... "	Int.	340	
1137	Sonoita..... "	1130	" ..... "	" Rough..... "	Int.	320	
				" Surfaced..... "	Int.	400	
1138	Crittenden.... "	1130	" ..... "	" Rough..... "	Int.	352	
				" Surfaced..... "	Int.	440	
1139	Patagonia.... "	1130	" ..... "	" Rough..... "	Int.	352	
				" Surfaced..... "	Int.	440	
1140	Bloxton..... "	1130	" ..... "	" Rough..... "	Int.	384	
				" Surfaced..... "	Int.	480	
1141	Sanford..... "	1130	" ..... "	" Rough..... "	Int.	384	
				" Surfaced..... "	Int.	480	
1142	Calabasas.... "	1130	" ..... "	" Rough..... "	Int.	416	
				" Surfaced..... "	Int.	520	
1143	Nogales..... "	1130	" ..... "	" Rough..... "	Int.	448	
				" Surfaced..... "	Int.	560	
1170	Deming....N. M.	1130	" ..... "	" per group 14 "	N. I.	600	Minimum weight 40,000 lbs., except when cars are loaded to their full space capacity, actual weight will govern. When destined to points beyond San Francisco.
		1133	Fairbank..... "				
		1	San Francisco...Cal.	Shingles..... "	Int,	75 per 1000 ft.	
		1	" " "	Lumber, per group 18 "	Int.	100	
1207	Redwood. ...Cal.	1199	Millbrae..... "	" ..... "	Int.	100	
		1202	San Mateo..... "	" ..... "	Int.	75	
		1227	Los Gatos..... "	" per group 28, "	Int.	200	
		894	Los Angeles..... "	Sash and Doors, glazed and unglazed.....C. L.	Int.	550	Minimum weight 12 tons. Application intermediate via Lathrop and Tracy.
		1251	Hollister..... "	Lumber..... "	Int.	200	
		1252	Tres Pinos..... "	" ..... "	Int.	250 per 100 lbs.	
		1281	Pacific Grove.... "	Doors, per group 7..... "	Int.	14	
				" " L.C.L.	Int.	18	
1219	Santa Clara... "			Doors, per group 6..... "	Int.	15	
				" " L.C.L.	Int.	18	
				Sash, per group 20....C. L.	Int.	14	
				" " L.C.L.	Int.	22	
		1281	" " "	" per group 25....C. L.	Int.	15	
				" " L.C.L.	Int.	20	
		1281	" " "	Millwork.....C. L.	Int.	20	
				" .....L. C. L.	Int.	24	
1220	San Jose..... "	894	Los Angeles..... "	Sash and Doors, glazed and unglazed.....C. L.	Int.	Ton. 550 per 100 lbs.	Minimum weight 12 tons. Application intermediate via Lathrop and Tracy.
1227	Los Gatos.... "	1251	Hollister..... "	Shingles..... "	Int.	40 per 1000 ft.	
		1263	Watsonville..... "	Lumber..... "	Int.	330	
		1273	Santa Cruz..... "	" ..... "	Int.	360	
1228	Alma..... "	1280	Monterey..... "	" ..... "	Int.	360	
		1285	Salinas..... "	" ..... "	Int.	405	

Station No.	FROM	Station No.	TO	ON	Application.	Rate in Cents per Ton of 2,000 Lbs., Except as shown.	REMARKS
2	Pajaro.....Cal.	.....	Points on S. P. Co.'s lines in California South of Tracy, Lathrop and Farmington...Cal.	Lumber, per group 19, C.L.	Int.	....	Add $1.80 per ton to Tariff rates applying from Stockton. Whenever Tariff rates from Truckee to same destination are lower, such rates will apply as maximum.
						Ton	
		4	Oakland..... "	" per group 15, "	Int.	300	Via San Jose, Cal.
		33					
		33	San Jose..... "	Box Stuff.....	Int.	200	
		1219	Santa Clara..... "	" "	Int.	220	
68	Aptos..... "	1246	Gilroy..... "	" "	Int.	180	
		....	Points on S. P. Co.'s lines in California south of Tracy, Lathrop and Farmington...Cal.	Lumber, per group 19, C. L.	Int.	....	Add $1.80 per ton to Tariff rates applying from Stockton. Whenever Tariff rates from Truckee to same destination are lower, such rates will apply as maximum.
						1000 ft.	
		4	Oakland..... "	" per group 28 "	Int.	335	Via San Jose, Cal.
		59	West Berkeley... "	" " "	Int.	335	
						Ton	
		80	Martinez..... "	Stakes, Grape..... "	Int.	300	
1269	Loma Prieta "	141	Sacramento..... "	Lumber..... "	Int.	350	
		611	Woodland..... "	Posts, per group 22..... "	Int.	380	
		....	Points on S. P. Co.'s lines in California south of Tracy, Lathrop and Farmington...Cal.	Lumber, per group 19 "	Int.	....	Add $1.80 per ton to Tariff rates applying from Stockton. Whenever Tariff rates from Truckee to same destination are lower, such rates will apply as maximum.
1270	Capitola..... "	....	" " "	" " "	Int.	.....	
						1000 ft.	
		1263	Watsonville..... "	" per group 28 "	Int.	135	
1271	Opal..... "						
			LomaPrieta,Cal,rates.	(Tariff or Specials) will also apply from		Opal,Cal.	
		1	San Francisco... "	Box Lumber.....C. L.	Int.	300	Min. C. L. 7,200 feet or 12 tons, at shipper's option.
		1	" (Vallejo St.). "	Lumber per group 28 "	Int.	200	Via Coast Division, Narrow Gauge.
		4	Oakland..... "	" " "	Int.	200	
		59	West Berkeley .. "	" " "	Int.	200	Via Coast Division Narrow Gauge to San Jose, Cal.
		623	Yuba City..... "	Posts, Redwood..... "	Int.	500	
		1237	New Almaden .. "	Lumber, per group 28, C. L.	Int.	240	Via Coast Division, Narrow Gauge.
1273	Santa Cruz... "	1410	Oakland(14thSt. "	" " "	Int.	200	
		1245	Rucker..... "	" " "	Int.	300	Via San Jose, Cal.
		1251	Hollister..... "	Lumber(Redwood only)C.L.	Int.	250	
		1263	Watsonville..... "	" " "	Int.	175	
		1280	Monterey..... "	" " "	Int.	200	
		1281	Pacific Grove.... "	" " "	Int.	200	
		1285	Salinas..... "	" " "	Int.	250	
		1422	Centerville..... "	" per group 28 "	Int.	200	Via Coast Division, Narrow Gauge.
		....	Points on S. P. Co's lines in California, south of Tracy, Lathrop and Farmington, Cal.	" " 19 "	Int.	....	Add $2.00 per ton to Tariff rates applying from Stockton. Whenever rates from Truckee to same destination are lower, such rates will apply as maximum.

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Station No.	FROM	Station No.	TO	ON	Applies Item	Rate in Cents per Ton of 2,000 Lbs., Except as shown.	REMARKS
1354	Elwood.....Cal.	1363	Summerland....Cal.	Piles.....C. L.	Int.	100	
		859	Mojave..... "	Lumber..... "	Int.	500	
		875	Saugus..... "	" ..... "	Int.	340	
		876	Newhall..... "	" ..... "	Int..	345	
		1366	Carpinteria..... "	" ..... "	Int.	60	
		1398	Santa Paula..... "	" ..... "	Int.	150	
		1400	Sespe..... "	" ..... "	Int.	230	
1359	Santa Barbara. "	1402	Fillmore..... "	" ..... "	Int.	240	
		1403	Buckhorn..... "	" ..... "	Int.	260	
		1404	Piru..... "	" ..... "	Int.	250	
		1405	Camulos..... "	" ..... "	Int.	270	
		1406	Castaic..... "	" ..... "	Int.	290	
		875	Saugus..... "	" ..... "	Int.	285	
		876	Newhall..... "	" ..... "	Int.	285	
		1359	Santa Barbara .. "	" ..... "	Int.	150	
		1378	Nordhoff ..... "	" ..... "	Int.	120	
		1391	Montalvo..... "	" per group 14... "	Int.	60	
		1382	Oxnard..... "	" ..... "	Int.	75	
		1385	Camarillo..... "	" ..... "	Int.	175	
		1386	Somis..... "	" ..... "	Int.	215	
		1389	Moorpark..... "	" ..... "	Int.	285	
1379	San Buenaventura "	1390	Santa Susana ... "	" ..... "	Int.	300	
		1390	Hasson..... "	" .....L. C. L...	Int.	400	
		1395	Saticoy..... "	" per group 14, C. L.	Int.	60	
		1398	Santa Paula..... "	" " "	Int.	90	
		1400	Sespe..... "	" ..... "	Int.	170	
		1402	Fillmore..... "	" ..... "	nIt.	180	
		1403	Buckhorn..... "	" ..... "	Int.	200	
		1404	Piru..... "	" ..... "	Int.	210	
		1405	Camulos..... "	" ..... "	Int.	210	
		1406	Castaic..... "	" ..... "	Int.	230	
1382	Oxnard..... "	1359	Santa Barbara .. "	Piling..... "	Int.	150	
		1398	Santa Paula.... "	Lumber..... "	Int.	100	
		876	Newhall..... "	" ..... "	Int.	195	
		1402	Fillmore..... "	" ..... "	Int.	90	
		1403	Buckhorn..... "	" ..... "	Int.	110	
1398	Santa Paula . "	1404	Piru..... "	" ..... "	Int.	120	
		1405	Camulos..... "	" ..... "	Int.	120	
		1406	Castaic..... "	" ..... "	Int.	140	
						1000 ft.	
1408	Alameda Point "	1471	Santa Cruz..... " (Via Coast Division Narrow Gauge)	" ..... "	Int.	300	Lath and shingles take proportionate rate.
		1422	Centerville..... "	" ..... "	Int.	100	
1410	Oakland(14thSt "	1227	Los Gatos..... "	" per group 28... "	T, I,	200	
		1469	Powder Works .. "	" ..... "	N, I,	350	Via Coast Division, Narrow Gauge.
1429	San Jose ..... "	1251	Hollister..... "	" ..... "	Int.	200	
		1252	Tres Pinos..... "	" ..... "	Int.	250	
		1251	Hollister..... "	" per group 28... "	Int.	335	
		1252	Tres Pinos..... "	" " "	Int.	385	
		1268	Aptos..... "	" " "	Int.	260	
		1274	Castroville..... "	" " "	Int.	335	
1446	Laurel..... "	1284	Graves..... "	" " "	Int.	335	Via Santa Cruz
		1285	Salinas..... "	" " "	Int.	385	
		1289	Chualar..... "	" " "	Int.	510	
		1290	Gonzales..... "	" " "	Int.	535	

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Station No.	FROM	Station No.	TO	ON	Application	Rate in Cents per Ton of 2,000 Lbs., Except as shown.	REMARKS
		1293	Soledad.....Cal.	Lumber, per group 28, C.L.	Int.	560	
		1297	King City..... "	" " "	Int.	635	
		1299	San Lucas..... "	" " "	Int.	660	
1446	Laurel.....Cal.	1301	San Ardo..... "	" " "	Int.	710	Via Santa Cruz.
		1303	Bradley..... "	" " "	Int.	735	
		1312	Santa Margarita. "	" " "	Int.	760	
		1471	Santa Cruz..... "	" " "	Int.	135	
		1246	Gilroy..... "	" " "	Int.	335	
		1251	Hollister..... "	" " "	Int.	335	
		1252	Tres Pinos..... "	" " "	Int.	385	
		1268	Aptos..... "	" " "	Int.	260	
		1274	Castroville..... "	" " "	Int.	335	
		1281	Pacific Grove.... "	" " "	Int.	335	
		1285	Salinas..... "	" " "	Int.	385	
1447	Glenwood.... "	1289	Chualar..... "	" " "	Int.	510	Via Santa Cruz.
		1290	Gonzales..... "	" " "	Int.	535	
		1293	Soledad..... "	" " "	Int.	560	
		1297	Kings City..... "	" " "	Int.	635	
		1299	San Lucas..... "	" " "	Int.	660	
		1301	San Ardo..... "	" " "	Int.	710	
		1303	Bradley..... "	" " "	Int.	735	
		1312	Santa Margarita. "	" " "	Int.	760	
		1262	Pajaro..... "	" " "	Int.	290	
		1263	Watsonville..... "	" " "	Int.	290	
		1268	Aptos..... "	" " "	Int.	240	
		1289	Chualar..... "	" " "	Int.	490	
		1290	Gonzales..... "	" " "	Int.	515	
		1293	Soledad..... "	" " "	Int.	540	
1453	Union Mill.... "	1297	Kings City..... "	" " "	Int.	615	
		1299	San Lucas..... "	" " "	Int.	640	
		1301	San Ardo..... "	" " "	Int.	690	
		1303	Bradley..... "	" " "	Int.	715	
		1305	San Miguel..... "	" " "	Int.	740	
		1307	Paso Robles..... "	" " "	Int.	740	
		1308	Templeton..... "	" " "	Int.	740	
		1312	Santa Margarita. "	" " "	Int.	740	
		853	Tehachapi..... "	Staves and Heading.... "	Int.	575	
1458	Ben Lomond . "	1263	Watsonville..... " (Via Santa Cruz)	Box Stuff..... "	Int.	150	
		1263	Watsonville..... "	" " ..... "	Int.	150	Via Santa Cruz
						1000 ft.	
		1	San Francisco... "	Box Shooks..... "	Int.	200	Min. marked wt. deposity.
		1	" (VallejoSt).. "	Lumber, per group 28 "	Int.	200	
		4	Oakland..... "	" " "	N. I.	200	
1463	Boulder Creek "	4	" ..... "	Split Stuff (Posts, Pickets, Grape Stakes and Laggings).....C. L.	Int.	200	
		23	Haywards..... "	Lumber..... "	Int.	250	
		59	West Berkeley .. "	" per group 28... "	N. I.	200	
		410	Wheatland..... "	Poles, Hop..... "	Int.	400	
						Ton.	
		815	Tulare..... "	Posts..... "	Int.	685	Includes transfer at San Jose.

Station No.	FROM	Station No.	TO	ON	Application.	Rate in Cents per Ton of 2,000 Lbs., Except as shown.	REMARKS
		853	Tehachapi.....Cal.	Staves and Heading . .C. L.	N. I.	575	Min. wt. 12 tons, includes transfer at San Jose.
						1000 ft.	
		1189	Colma..... "	Lumber..... "	N. I.	275	
		1425	Rocker..... "	" per group 28... "	Int.	300	
		1246	Gilroy..... "	" " " "	Int.	335	
		1251	Hollister..... "	" " "	Int.	335	
		1252	Tres Pinos..... "	" " "	Int.	385	
		1268	Aptos..... "	" " "	Int.	260	
		1274	Castroville..... "	" " "	Int.	335	
		1281	Pacific Grove.... "	" " "	Int.	335	
		1285	Salinas..... "	" " "	Int.	385	Via Santa Cruz.
		1289	Chualar..... "	" " "	Int.	510	
		1290	Gonzales..... "	" " "	Int.	535	
		1293	Soledad..... "	" " "	Int.	560	
		1297	Kings City..... "	" " "	Int.	635	
		1299	San Lucas..... "	" " "	Int.	660	
		1301	San Ardo..... "	" " "	Int.	710	
1463	Boulder CreekCal.	1303	Bradley..... "	" " "	Int.	735	
		1312	Santa Margarita. "	" " "	Int.	760	
		1401	Oakland(14thSt) "	" " "	Int.	200	
		1422	Centerville..... "	" " "	Int.	200	Via Coast Division, Narrow Gauge.
		1427	Santa Clara..... "	" ..... "	N. I.	200	
						1000 Shingles	
		1427	" " "	Shingles..... "	Int.	17½	Via Narrow only. Min. C. L. 80,000 Shingels.
		1429	San Jose..... "	" ..... "	Int.	17½	
						1000 ft.	
		1429	" " "	Lumber..... "	N. I.	200	Via Coast Division, Narrow Gauge.
		1237	New Almaden .. "	" per group 28... "	Int.	240	
		1237	" " "	Logs, per group 11..... "	Int.	225	Min. C. L. 5,000 feet; applies on gross measurement.
		1245	Rucker..... " (Via San Jose)	Lumber, per group 28, "	Int.	300	
						Ton	
		33	San Jose..... "	Sawdust..... "	Int.	110	Minimum weight, 30,000 lbs.
1466	Fahihn..... "	1197	S. San Francisco "	" ..... "	Int.	210	
						1000 ft.	
		1	San Francisco, (Vallejo St).....Cal.	Lumber, per group 28 "	Int.	200	Via Coast Division, Narrow Gauge.
		4	Oakland..... "	" " "	Int.	200	Via Coast Division, Narrow Gauge to San Jose.
		59	West Berkeley .. "				
						Ton	
		853	Tehachapi..... "	Staves and Heading.... "	N. I.	575	Min. wt. 12 includes tra at San Jose.
						1000 ft.	
		1245	Rucker..... "	Lumber, per group 28 "	Int.	300	Via San Jose.
		1251	Hollister..... "	" " "	Int.	300	
		1252	Tres Pinos..... "	" " "	Int.	350	
1467	Old Felton .... "	1262	Pajaro..... "	" " "	Int.	275	
		1263	Watsonville..... "	" " "	Int.	275	
		1268	Aptos..... "	" " "	Int.	225	
		1274	Castroville..... "	" " "	Int.	300	
		1281	Pacific Grove.... "	" " "	Int.	300	Via Santa Cruz.
		1285	Salinas..... "	" " "	Int.	350	
		1285	Chualar..... "	" " "	Int.	475	
		1290	Gonzales..... "	" " "	Int.	500	
		1293	Soledad..... "	" " "	Int.	525	
		1297	Kings City..... "	" " "	Int.	600	

Station No.	FROM	Station No.	TO	ON	Application.	Rate in Cents per Ton of 2,000 Lbs., Except as shown.	REMARKS
		1299	San Lucas.....Cal.	Lumber, per group 28, C.L.	Int.	625	
		1301	San Ardo..... "	" " "	Int.	675	Via Santa Cruz.
		1303	Bradley..... "	" " "	Int.	700	
140	Old Felton...Cal.	1312	Santa Margarita. "	" " "	Int.	725	
		1410	Oakland(14thSt.) "	" " "	Int.	200	Via Coast Division, Narrow Gauge.
		1422	Centerville..... "	" " "	Int.	200	
		1439	New Almaden... "	" " "	Int.	240	
553	South Vallejo "	570	St. Helena..... "	Staves..... " (Min. wt. 15 tons.)	Int,	130	To apply only in connection with Transcontinental shipments.
						100 Lbs.	
		1131	Rock Spur.....Ariz.	Lumber, per group 29, "	Int.	50	
		1132	Grand Central... "	" " "	Int.	50	
		1133	Fairbank..... "	" " "	Int.	50	
	San Francisco, San Jose, Sacramento, Stockton, South Vallejo, Weed and points between..	1134	Brookline ..... "	" " "	Int.	53½	
....		1135	Huachuca..... "	" " "	Int.	55½	
		1136	Elgin..... "	" " "	Int.	59½	
		1137	Sonoita..... "	" " "	Int.	62	
		1138	Crittenden..... "	" " "	Int.	63½	
	Rocklin, Cal., Reno, Nev., and points between..	1139	Patagonia..... "	" " "	Int.	63½	
....		1140	Bloxton..... "	" " "	Int.	66	
		1141	Sanford..... "	" " "	Int.	66	
		1142	Calabasas..... "	" " "	Int.	67½	
		1143	Nogales..... "	" " "	Int.	67½	

thermal device for releasing said solder joint, and means for
203 moving said movable part, said protector having provisions for automatically resoldering said joint with the protector in operative condition.

Count 4. An electrical circuit protector comprising means operable upon an excess of current for protecting the circuit, and having provisions whereby it is automatically reset and resoldered in reset condition.

Count 5. A thermally operable electrical controller having provisions for automatically resecuring in operative condition parts released upon operation.

Count 6. A solder-joint, electrical circuit protector having provisions for automatically resoldering in operative condition parts released upon operation.

Count 7. In an electrical circuit protector, the combination of a quantity of cementing material, means for softening said material on the passage of an unduly strong current, a movable part normally held against movement by said cementing material, and means for moving said part when the same is released by the passage of an unduly strong current, said part being moved into position for another operation and associated with said cementing material after movement, whereby said part is automatically recemented after movement.

Count 8. In an electrical circuit protector, the combination of a movable part normally held against movement by a solder joint, means for softening the solder of said joint on the passage of an unduly strong current, and means for moving said part when
204 the same is released by the softening of the solder, said part being moved into position for another operation and being associated with the solder after such movement, whereby the parts are resoldered or self-soldered preparatory for another operation.

Count 9. A solder joint electrical circuit protector having provisions for automatically resoldering itself in operative condition.

Count 10. In an apparatus of the class specified, the combination of a device operable upon an excess of current, and means whereby said device upon operation is simultaneously reset for a subsequent operation.

Count 11. An electrical circuit protector comprising means for controlling the circuit, and having provisions whereby it is operated to control the circuit and simultaneously reset for a subsequent operation.

Count 12. A self-soldering electric circuit protector, comprising means for controlling the circuit, and having provisions whereby upon operation it is simultaneously reset for a subsequent operation.

The interference involves your application above identified, and also your application #133,449, claims 42, 45, 49, 50, 54, 55, 56, 58 and 65 being taken from this application, and claims 1, 22 and 24 from your application #133,449, and set forth in a letter in said case of even date herewith; and

An application for Electro Thermal Switch filed by John Erickson, of 1430 Monadnock Block, Chicago, Ill., whose attorney is

Bulkley & Durand, of Monadnock Bldg., same place, and
205 whose assignee is the American Electric Company, of same place; and

An application for Thermo Electric Circuit Breakers filed by Edward W. Leeper, 240 W. Lake St., Chicago, Ill., whose attorney is Frank B. Cook, of 240 W. Lake St., Chicago, Ill.; and,

An application for Protective Apparatus for Switchboards and the Like filed by William Kaisling, of 498 Winnemac Ave., Chicago, Ill., whose attorney is Kempster B. Miller, of 1442 Monadnock Block, Chicago, Ill., and whose associate attorney is Edward E. Clement, of McGill Bldg., Washington, D. C.

For the purposes of distinction this application #104,021, will be designated as "Case X", and #133,449 will be designated as "Case Y."

The relation of the counts of the interference to the claims of the respective parties is as follows:

Counts.	Erickson.	Leeper.	Kaisling.	Rolfe.	Case X.
1	32	31	35	42	" "
2	33	32	36	45	" "
3	34	33	37	49	" "
4	35	34	38	50	" "
5	36	35	39	54	" "
6	37	36	40	55	" "
7	38	37	41	56	" "
8	39	38	42	58	" "
9	42	39	45	65	" "
10	44	40	47	1	" Y
11	50	43	48	22	" "
12	51	44	49	24	" "

A. F. KINNAN, *Ex.*

W. J. S.

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Interference A.

Interference No. —, Paper No. 24.

Name, C. A. Rolfe.
Serial No. 104,021.
Title, Electrical Circuit Protector.
Filed April 21, 1902.
Interference with 147/9 (Kaisling) 61/3 (Erickson) and 6/5 (Leeper).
Decisions of—
Primary Examiner, ——, dated ——.
Ex'r of Interferences, ——, " ——.
Board, ——, " ——.
Commissioner, ——, " ——.

600 We further certify that in connection with the said amended bill of complaint, and in support thereof, the complainants filed the affidavits of J. C. Stubbs and R. B. Miller, which said affidavits are in the words, letters and figures as follows:

In the Circuit Court of the United States for the Northern District of California.

SOUTHERN PACIFIC COMPANY and OREGON & CALIFORNIA RAILROAD COMPANY, Complainants,

vs.

INTERSTATE COMMERCE COMMISSION, Defendant.

I, J. C. Stubbs, being sworn, upon my oath say: I am Traffic Director of the Southern Pacific Company and of the Oregon & California Railroad Company. After the rate on lumber and forest products from points in the Willamette Valley to San Francisco and Bay points was raised to $5.00 per ton in 1904, it was reduced as applied to rough green fir lumber and lath to the rate and scale of $3.10 per ton under these circumstances: Some of the gentlemen connected with the lumber milling interests in the Willamette Valley, I think particularly Mr. R. A. Booth, approached me about the rate and represented to me that they were in hard financial condition. Upon this representation, and at their earnest solicitation, I agreed to reduce the rate as above shown. I stated at the time that the rate had always been too low; that it ought never to have been made as low as it was. In making the reduction I did not,
601 directly or indirectly, give any promise that the reduced rate would be continued for any specific length of time. I did not understand that I was waiving nor did expressly or inferentially waive any right of the railway company to raise the rate whenever in the judgment of its traffic officers it should be raised. I had no expectation of continuing this rate indefinitely, but took it as a matter of course that it would be raised whenever the financial condition of the gentlemen appealing to me for the reduction should be improved, or whenever traffic conditions should further urge its increase. I said nothing from which any one could rightfully draw any other conclusion. The rate when first established was very low, and under changed conditions is exceedingly low. The rate of $5.00 is itself a low rate, and the conditions surrounding the road are such that no lower rate than this ought to be fixed by the road or forced upon it.

J. C. STUBBS.

COUNTY OF COOK,
State of Illinois, ss:

Sworn and subscribed to before me J. H. Redelings, a notary public in and for the County of Cook, State of Illinois, by the said J. C. Stubbs, this 27th day of July, 1908.

[SEAL.] J. H. REDELINGS,
Notary Public.

My Commission Expires Apr. 23, 1911.

15—592

Endorsed: Filed Sept. 23, 1908. Southard Hoffman, Clerk, by W. B. Maling, Deputy Clerk.

602 In the Circuit Court of the United States for the Northern District of California.

SOUTHERN PACIFIC COMPANY and OREGON & CALIFORNIA RAILROAD COMPANY, Complainants,
vs.
INTERSTATE COMMERCE COMMISSION, Defendant.

I, R. B. Miller, of Portland, Oregon, being duly sworn, upon my oath say I am General Freight Agent of the Oregon Railroad & Navigation Company, and also of what are known as the Southern Pacific Company's Lines in Oregon; those lines include the Oregon & California Railroad from Ashland north to the City of Portland, Oregon, with sundry branches. The Oregon & California Railroad extends south of Ashland to the Oregon-California state line, but that part of it is not under my jurisdiction as General Freight Agent; this is about twenty-seven (27) miles.

The Oregon & California Railroad has a total mileage of about six hundred and sixty-six (666) miles, of which about three hundred and sixty-eight (368) miles is main line, the remainder branch lines. The Oregon & California Railroad extends from the Oregon and California state line to the City of Portland through the Willamette Valley. It has various branches lying in that Valley.

603 The Oregon & California Railroad connects with the rails and line of the Southern Pacific Company, and makes a through route from Portland, Oregon, through the Willamette Valley to the City of San Francisco, California, and various places on the Bay of San Francisco, which are named in the bill filed in this suit, and known as "San Francisco Bay Points." The Southern Pacific Company operates, and for some years past has operated, the Oregon & California Railroad, in connection with, and as a part of its system.

The Willamette Valley lies in the State of Oregon south of the Columbia River and extends northward about one hundred and fifty (150) or one hundred and sixty (160) miles; the Willamette River flowing through it. This river flows into the Columbia River and is navigable as far as Corvallis, a distance of about ninety-seven (97) miles from Portland. Practically all of this stream where navigable is substantially parallel to the rails of the Oregon & California Railroad Company; at some places being almost in contact with them, and at no places is more than ten (10) or twelve (12) miles from them.

In the Willamette Valley south of Portland there are about one hundred and fifty (150) mills engaged in the manufacture of fir lumber. Probably one-fourth of these are situated directly on the lines of the Oregon & California Railroad, and about three-fourths are situated away from these lines short distances, but ship over them. The furthest point north, leaving Portland out of considera-

tion, at which the largest of these mills is built, is Newberg twenty-six (26) miles south of Portland, and some other places where large mills are built are Salem fifty-three (53) miles south of
604 Portland, Dallas sixty-three (63) miles south of Portland. The places at which mills are built extend as far south as Cottage Grove, which is near the head of the Willamette Valley, about one hundred and forty-four (144) miles south of Portland.

In the year 1898 there was practically no lumber sawed in the Willamette Valley, there being only one or two small mills. In the year 1899 there was installed for the carriage of lumber over the lines of the Southern Pacific Company, including the Oregon & California Railroad, a rate of $3.10 per ton of two thousand (2000) pounds, from Portland, East Portland, Saginaw, Coburg, Albany, and a few points in the Willamette Valley, to San Francisco and a few San Francisco Bay Points. The history of the rates applying from Willamette Valley points will be more specifically and definitely shown in the exhibit attached to this affidavit, and made part of it, and marked "Exhibit Miller No. 1."

At the time the $3.10 rate was installed there was little traffic by rail between Portland and San Francisco. The city of Portland, and the cities of Seattle and Tacoma, Washington, were connected by water, navigable for ocean going vessels, with the city of San Francisco, as were Grays Harbor, which is situated between the mouth of the Columbia River and Puget Sound, and other places in the states of Washington and California. About all these cities had been, were and still are, many mills engaged in the manufacture of lumber, and during all this time lumber has been sawed there in large quantities. Freight vessels carrying this lum-
605 ber ply and for years have plied between these mills and the city of San Francisco and certain Bay points. The rate of $3.10 per ton to San Francisco and Bay points was an exceedingly low rate and established in order to develop the lumber industry in the Willamette Valley and to aid the mills established, and to be established there, in meeting the competition, in the market of San Francisco and Bay points, of the mills which could reach those points by water.

In January, 1904, a rate of $5.00 per ton on lumber from Willamette Valley points to San Francisco Bay Points was instituted, but at the earnest solicitation of certain lumber manufacturers, in May, 1904, the rate of $5.00 was withdrawn and the rate of $3.10 per ton was restored, as applied to rough green fir lumber and lath. In April, 1907, the $5.00 rate, shown in the opinion and order of the Commission, was installed. This rate was installed because the other was unremunerative. The $5.00 rate is in itself a low rate. With regard to the $3.10 rate, I have never regarded that as remunerative I discussed this rate with the shippers, telling them it was unremunerative and would have to be changed, and recall particularly a conversation with Mr. Booth of the Booth-Kelley Lumber Co., in the year 1901, in which I told him I thought the rate very low, that it could not continue indefinitely and that the

Willamette Valley mills should use their efforts to build up and increase trade in the East.

Prior to about the year 1901 the mills of the Willamette Valley had no outlet for their lumber via Portland to the East. About that time a rate was established to eastern points through
606 Portland, giving those mills the same rate to the East that Portland had, except to territory north and west of Pocatello, Idaho; and as to this territory, the Willamette Valley mills were given the same rate as Portland, plus the local rate to Portland from the shipping point. East of this territory the Willamette Valley mills had exactly the same access as the Portland mills.

In the year 1906 the movement of cars of commercial lumber from the territory in Oregon south of Portland and north of Ashland over the lines aforesaid, was as follows:

From points south of Portland to San Francisco Bay Points	1494	cars
To Bay District points	391	"
To other California points	1363	"
To Utah, Nevada and Arizona via Ashland	159	"
To points other than and beyond Portland	6395	"
Making the total number of cars from the Willamette Valley and south in said year	9802	"

The term "Bay District Points" is used to cover points adjacent to San Francisco Bay and taking rates equal to the combination of the rate to San Francisco Bay points and the local rate thence to destination, subject to a maximum through rate of $5.00 per ton.

Of the cars shown, 1494 went to points to which the rate of $3.10 per ton applied on rough green fir lumber; 391 went to places to which the rate of $3.10 per ton applied on rough green fir lumber plus the local rate from the basing point as above shown. All the cars to Utah, Nevada and Arizona via Ashland, and the cars to other California points, took a rate of $5.00 per ton or greater. All the cars moving south to San Francisco Bay Points were not rough fir lumber, but at least 80 per cent. of such cars were rough green
607 lumber. On the cars which were not rough green lumber, a higher rate in all cases than $3.10 per ton applied. It will thus be seen that of the cars moving in 1906, only 3407 moved to the south, as against 6395, via Portland to the East, and that of the number moving south 159 went to points east of California. It also appears that of the total output of the territory south of Portland and north of Ashland for that year, only 1494 cars of 15% moved to San Francisco and Bay Points, and about 4% to Bay District Points, so that over 80% of the lumber moved from the territory south of Portland and north of Ashland moved out on a rate of $5.00 per ton or greater.

At this time I have not before me the figures showing the movement of commercial lumber through Ashland in the year 1907 from the Willamette Valley, exclusive of Portland, but the total number of cars of commercial lumber moving south, from Portland and north of Ashland was 5443, while the number of cars moving from the territory south of Portland and north of Ashland through Portland

to the East was 6332. I have not before me figures from which I can give the movement to San Francisco and Bay Points in the year 1907, but I feel quite certain it was less than the number in 1906.

I am of the opinion and belief, based upon my experience as a traffic manager, and the movement of lumber in the past, that the movement of lumber from the Willamette Valley via Portland to the East will increase, and that the prosperity of the mills in the Willamette Valley is not dependent upon the rate of $3.10 to San Francisco and Bay Points, but that after the restoration of
608 normal conditions in the financial world those mills will continue to prosper and that lumber will continue to move to those points under the $5.00 rate.

I have made an investigation as to the prices of lumber, and attached hereto, and made part hereof, is an exhibit marked "Exhibit Miller No. 2," showing the prices in Portland in the years 1893, 1894, 1895, 1896, 1904, 1905, 1906, and 1907, of rough common lumber and flooring. These prices serve as a basis for the prices of other grades of lumber and may be taken as indicative of the prices in the Willamette Valley and of the advances made on lumber there. Prices were given on the hearing of the complaint, out of which this cause grows, before the Interstate Commerce Commission, as to ties, timbers, stringers, framing and sills 36 to 40 feet long, as they existed at the Booth-Kelley mills from the years 1901 to 1907. I attach hereto a list of those prices, marked "Exhibit No. 3," and made part hereof. From my information and belief I think such prices fairly indicate the prices of the lumber, of the kind described, in the Willamette Valley generally, at the time for which the price is given. I have with me no information from which I can give prices of those particular timbers prior to 1901.

It appeared on the hearing of the cause before the Interstate Commerce Commission, and from my information, belief and experience, I believe that the cost of the producing of lumber in the Willamette Valley in the past five or six years has been between seven and eight dollars per thousand feet. This includes 50 cents per thousand feet stumpage.

609 In the manufacture of lumber it is the average profit and cost that is to be considered in determining the prosperity of the mill, and the success of the milling enterprise. In successfully conducting mills, some of the higher grades are sold at large profits beyond the cost of manufacture; some of the lower grades at a smaller margin of profit; some lumber, not in excess of the cost of manufacture, and some of the lower grades less even than the manufacturing cost. This is true irrespective of the question of freight rates.

It is held by many lumbermen and I believe the fact to be true, that the convenience to shipper and consignee of handling lumber by rail to San Francisco and Bay Points, is so much greater than that of handling it by vessel, that carriage by cars is worth to the shipper $1.50 to $2.00 per thousand feet more than shipping by vessel.

Attached hereto, and made part hereof, is a table, marked "Ex-

hibit Miller No. 4," showing distances from various points in the Willamette Valley to San Francisco, and the rate per ton per mile at the $5.00 per ton rate. The table is fairly representative of points of production of lumber in the Willamette Valley. The distances given are correct, and the average distance over which lumber moves is 638 miles and at the rate of $3.40 per ton, allows only about five mills per ton per mile for moving lumber over a most difficult route, and one exceedingly expensive to operate. The twenty-five cents embraced in the $3.65 rate is allowed by the Commission only on account of extra cost of service. The $3.40 rate is less than the rate allowed and established by the Commission as reasonable in
610 a number of instances where the cost of operation is far less than on the line between San Francisco and Portland. The Commission allowed and established as a just and reasonable rate from Portland to Omaha, a distance of 1799 miles, a rate of fifty (50¢) cents per 100 pounds, on lumber, such as that involved in this suit, or five and one-half mills per ton per mile. They allowed from Portland to Denver, a distance of about 1400 miles, a rate of forty cents (40¢) per 100 pounds, or five and seven-tenths (5.7) mills per ton per mile. They established a rate from Seattle to Salt Lake, a distance of 1089 miles, of seven and one-third (7⅓) mills per ton per mile. In all of these instances the lumber moves over a way less difficult of operation than that in this suit, and longer distances as above shown, so that the Commission has established a lower rate per ton per mile for the shorter distance than those above shown, notwithstanding the unusual grades and difficulties of operation.

Owing to the conformation of the Willamette Valley and the fact that the Willamette River is navigable for about one hundred miles, so that products from very many points can leave by water, the rail carrier is brought into sharp competition with the water carrier and in many instances has been forced to make low rates on products originating in the Willamette Valley or abandon the traffic. By reason of this competition there is constantly demanded in the fixing of rates from the Valley the discretion, experience and skill of a traffic man, thoroughly acquainted with traffic conditions. Most of the lumber in the Willamette Valley originates on branch lines, which are maintained chiefly for the hauling of lumber.
611 These branch lines are necessarily operated at an increased expense, because it is necessary to maintain on them engines, cars and an operating force.

The excess movement of empty cars is largely to the north through Ashland and this adds greatly to the expense of operating these lines. In the year 1906 there moved north through Ashland 7589 empty cars, and south only 690 empties; these southbound empties being largely tank cars. The excess of southbound tonnage is due to the fact that there is a considerable volume of tonnage moving from the Willamette Valley to California by rail, while there is but little rail tonnage from California into the Valley. As before stated, a large amount of this southbound tonnage is lumber.

I find on examining the reports that the cost of fuel on the entire Southern Pacific Pacific System, including the Nevada & California

and Sonora Railways, for the year ending June 30, 1907, equated to a coal basis, was for coal $2.95 per ton, wood $6.025 per ton, oil $1.508 per ton. On the Oregon lines of the Southern Pacific System for the year ending June 30th, 1907, equated to a coal basis, the cost of fuel was for coal $4.54 per ton, wood $6.01 per ton, and oil $2.80 per ton.

In the year 1907 the tonnage and earnings on lumber and forest products on the Oregon & California Railroad were as shown in the exhibit hereto attached, and made part hereof, and marked "Exhibit Miller No. 5." These figures show that the total amount derived from the carriage of lumber and forest products was $2.00 per ton. The total derived from all other freight $2.93 per ton.

612 Referring to the Annual Report of the Southern Pacific Company Pacific System for the year ending June 30, 1907, filed with the Interstate Commerce Commission, it appears that the commercial tonnage of lumber was 2,306,246; the earnings upon this were $5,703,376.98, showing the lumber paid $2.429 per ton or 42.9 cents per ton more than on the Oregon & California Railroad. The other commercial tonnage on that system was 13,889,937, and the total revenue $44,997,358.99, making the amount received for freight on that system $3.24 per ton or 31 cents more than the amount received on the Oregon & California Railroad.

The earnings and expenses of the Oregon & California Railroad for the year 1907 were as follows:

Total earnings	$6,417,151.93
Total Passenger earnings	2,773,370.98
Total Freight earnings	3,370,502.79
Operating Expenses for the year 1907	4,766,350.22
Percentage of Operating Expenses to earnings	74.28
Percentage of Operating Expenses and Taxes to Earnings	76.53
Freight earnings per freight train mile	2.94
Passenger earnings per passenger train mile	2.29
Operating Expenses and Taxes per revenue train mile	2.04

The expenses and earnings of the Southern Pacific Pacific System were as follows for the year ending June 30, 1907:

Ration of Operating Expenses to Earnings:

Excluding Taxes	59.50
Including Taxes	62.00

613 Earnings per Train Mile:

Passenger trains	$1.90
Freight trains	3.95

Operating Expenses per train mile:

Excluding Taxes	$1.77
Including Taxes	1.90
Earnings per ton mile of freight	1.205

The average loading per freight train on the Oregon & California Railroad was 279.4 tons, while the average loading on the Southern Pacific Pacific System operating in California was 415.34 tons. The divisions allowed the Southern Pacific Oregon lines on traffic interchanged with connecting lines at Portland are very liberal to those lines and are indicated on statement hereto attached, marked "Exhibit Miller No. 6," and made part hereof.

I here refer to the evidence given by me in the hearing before the Interstate Commerce Commission on the application to reduce the $5.00 rate here referred to, and to the exhibits filed by me, and state that said evidence as given by me was true, and I pray that the same may, so far as may be necessary, be taken in connection with this affidavit, and as a part thereof, and I say that the exhibits filed by me are a true statement of the facts to which they refer, and pray that they may be considered in in connection with this affidavit as a part thereof.

R. B. MILLER,
General Freight Agent, Oregon Railroad & Navigation Company and Southern Pacific Company Lines in Oregon.

614 STATE OF OREGON,
County of Multnomah, ss:

Sworn to and subscribed before me W. A. Robbins, a Notary Public in and for the County of Multnomah, in the State of Oregon, by the said R. B. Miller, this twenty-third day of July, 1908.

Witness my hand and seal the day and date last above written.

[SEAL.] W. A. ROBBINS,
Notary Public for Oregon.

615 "EXHIBIT MILLER NO. 1."

History of Rate on Lumber from Various Points on Southern Pacific Company's Lines in Oregon to Various Points in California.

The $3.10 rate applied to San Francisco, Oakland and a few other points designated as San Francisco Bay Points, and also used as basis in arriving at through rate to Bay district points, viz: points adjacent to San Francisco Bay Points.

The tariffs in which rate is found are as follows:

Southern Pacific Company,
Lumber Tariff No. 2, I. C. C. #1301;
Southern Pacific Company,
Lumber Special No. 1, I. C. C. #1671;
Southern Pacific Company,
Interstate Commodity Rate #7, I. C. C. #2268.
Southern Pacific Company,
Local Freight Tariff #47, I. C. C. #2874.

This rate first made its appearance in Amendment #13 to Southern Pacific Company Lumber Tariff No. 2, I. C. C. 1301, April 22,

1899, and applied on lumber of all kinds, from Portland, Saginaw, Coburg and Albany only to San Francisco Bay Points only.

In August, 1899, under Amendment 29, the rate was made to apply from Portland, Jefferson Street.

616 On January 1, 1900, Southern Pacific Co. Lumber Tariff # 2, I. C. C. # 1301, a flat rate of 3.10 per ton was installed from

Portland, Oregon } 162 miles.
Drain, Oregon }

and points between these two; also Woodburn, Springfield Branch, to San Francisco and a few Bay points.

$3.50 to Stockton, Sacramento, San Jose and Santa Clara.
$4.10 to Elmira and Vacaville.
$4.60 to Winters.

The $3.10 flat rate and these others comprise what is termed the $3.10 scale.

At the same time this scale was also made effective from Portland (Jefferson Street) and all points on West Side and Yamhill Divisions of Southern Pacific Company's Lines. These rates were just 25 cents in excess of rates from Portland—Drain, viz:

$3.35 to San Francisco Bay Points.
$3.75 to Stockton, etc.
$4.35 to Elmira and Vacaville.
$4.85 to Winters.

At this time the rate applied on Lumber only; but on October 25, 1900, it was modified so as to include Lath and Fence Posts.

617 On August 15, 1902, forwarding territory extended 101 miles beyond Drain to Glendale.

On June 16, 1902, forwarding territory was extended to Lebanon on Lebanon Branch and application was definitely limited to fir and soft lumber.

Several additional receiving points were also added.

On August 20, 1903, rate from
Portland to Glendale,
East Portland,
Portland, Jefferson St.,
was cancelled and *raised* to $5.00.

On August 20, 1903, $3.10 rate and scale was made to extend from Salem to Glendale and points between these two,
Woodburn, Springfield Branch, and
Lebanon Branch.

On this date also application was limited to rough green common lumber. On same date $3.35 rate and scale were published from all points on West Side and Yamhill Division and limited to apply on rough green common lumber.

On November 1, 1903, Amendment 89 to I. C. 1671 raised the rate from Portland, East Portland, and Portland, Jefferson St., to $7.50 per ton, but it was reduced to $5.00 per ton on December 7, 1903, by Amendment 92 to I. C. C. # 1671 since which time it has not been changed.

618 On December 7, 1903, forwarding points were further modified by limiting Woodburn, Springfield Branch, to points South of Tallman and main line territory to points Albany to Glendale.

On January 1, 1904, rate from all points in Oregon was raised to $5.00 per ton.

On May 10, 1904, in Amendment 117 to I. C. C. 1671, the $3.10 scale reinstated substantially as follows:

From

Portland,
East Portland,
California-Oregon State Line and points between,
Woodburn-Springfield Branch, Tallman and South,
Lebanon Branch,

To

Points other than San Francisco and others designated Bay Points

Rate of

$3.55 to $4.90 per ton.

From

Portland (Jefferson St.),
All points on West Side and
Yamhill Division, including
Sheridan Branch,

To

619 Points other than San Francisco and others designated Bay Points

Rate of

$3.80 to $4.95 per ton,

From

Salem to California-Oregon State Line and points between,
Woodburn, Springfield Branch, Tallman and South and Lebanon Branch,

To

San Francisco and others designated as Bay points flat

Rate of

$3.10 per ton.

From

Airlie,
Tualitan and points between, including Sheridan Branch on Yamhill Division,
Corvallis,
Beaverton and points between on West Side Division,

To

San Francisco and others designated as Bay Points, flat

Rate of

$3.35 per ton.

On April 18, 1907, above rates to all points were superseded by $5.00 rate, as per Southern Pacific Co. Local Freight Tariff # 47, I. C. C. # 2874, which is in effect now.

620 "EXHIBIT R. B. MILLER NO. 2."

Prices of Lumber at Portland for Years Shown Below.

	Rough com.	Floor. #1.	#2.	#3.	Logs at mill.	Stumpage.
1893	$7.00	18	13	9	4–5	15c. to 50c.
1894	6.00	16	12	8	3.50 to 4.50	"
1895	6.00	15	10	7	4–5	"
1896	6.00	16	11	8	4–5	"
1904	7.50	22	18	14	5–7	"
1905	9.00	24	20	16	5.50 to 7.50	"
1906	15.00	30	25	20	9.50 to 12.50	75c. to 2.25
1907	13.00	28	23	18	7.50 to 10.50	

Exhibit Miller No. 2.

621 "EXHIBIT R. B. MILLER NO. 3."

Prices of Rough Green Lumber.

Year.	Ties.	Timbers.	String.	Ro. fram.	Ro. sills, 36 to 40.
1907	Sls.—13.50	13.50	16.50	21.00	23.00
1906	Sls.— 9.45	8.50	9.50	18.00	21.00
1905	Sls.— 8.50	7.25	7.75	15.00	16.00
1904	Ro.— 8.50	8.00	8.50	15.00	15.00
1903	Sls.— 9.70	8.50	9.50	16.00	16.00
1902	Sls.— 8.00	8.00	10.00	14.00	15.00
1901	Ro.— 7.00	7.50	8.50	12.00	12.00

Exhibit Miller No. 3.

622 "EXHIBIT R. B. MILLER NO. 4."

Elevation.	Distance to San Francisco.		Rate per ton per mile.
240 ft	Albany	666	.0075
475 ft	Springfield	623	.008
340 ft	Dallas	708	.007
193 ft	Newberg	739	.0067
669 ft	Cottage Grove	602	.0083
	Average	668	.0075

Exhibit Miller No. 4.

623 "EXHIBIT R. B. MILLER No. 5."

Fiscal Year Ended June 30th, 1907.

Oregon & California Railroad.

Tonnage and Earnings.

	Commercial tonnage.	Freight earnings.	Company freight tonnage.	Total tonnage.
Lumber.....	425,925	$853,080.53		
Other forest products...	140,996	200,217.50		
All other freight.....	790,602	2,317,204.56		
Total, all freight.....	1,357,523	3,370,502.59	399,049	1,756,572

NOTE.—Cannot show details of Company tonnage, but it consists almost entirely of lumber, ties and piling.

Exhibit Miller No. 5.

624 "EXHIBIT MILLER No. 6."

Memorandum Showing Proportion of Through Rates Accruing to Southern Pacific Oregon Lines on Lumber, Shingles, and Products of the Forest, Taking Same Rates Interchanged with O. R. & N. Co. at Portland and East Portland, Oregon.

When destined	From	S. P. proportion.
	All stations on Southern Pacific Oregon Lines except Yamhill Division and Mohawk-Wendling Branch.	25% of through rate or proportion of through rate accruing west of Missouri River Common Points or West of Union Pacific Junction points of delivery to connecting lines but not to exceed 10 cents per 100 lbs. except where local rate is less, same will govern. (See note.)
	Points on Southern Pacific Yamhill Division.	Arbitrary 7½ cents per 100 lbs.
All points on Oregon Short Line R. R., Union Pacific, also all points on D. & R. G. R. R., and Colorado Midland Ry., except points south of Pueblo, Colo., all Colorado Common Points on Colorado & Southern Ry., and A. T. & S. F. Ry., and all points east of Colorado Common Points to which through rates are established.	Points on Southern Pacific Mohawk-Wendling Branch.	Through rate is based on arbitrary of 1½ cents per 100 lbs. over rate from Springfield, Oregon. Southern Pacific Co. receives this arbitrary plus 25 per cent. of through rate or proportion of through rate accruing west of Missouri River Common Points or west of Union Pacific junction points of delivery to connecting lines, but not to exceed 11½ cents per 100 lbs. (See note.)

625	All points on Corvallis & Eastern Ry. east of Albany to Mill City, inc.	Arbitrary of 3 cents for C. & E. Ry. is first deducted and Southern Pacific Co. receives 25 per cent. of remainder of through rate or proportion of through rate accruing west of Missouri River Common Points or west of Union Pacific junction points of delivery to connecting lines, but not to exceed local rate of 9 cents per 100 lbs. (See note.)
	All points on Corvallis & Eastern Ry. east of Mill City, Ore.	Through rate is based on arbitrary of 1½ cents per 100 lbs. over rates from Mill City and C. & E. receives this arbitrary in addition to Mill City revenue, Southern Pacific receives same earnings as on traffic originating at Mill City.

NOTE.—On shipments destined to Branch Line points or Denver & Rio Grande R. R. west of Grand Junction, Colorado, the Southern Pacific Co. is restricted to ½ proportion of the Main Line rate.

Divisions on Traffic Interchanged with Pacific System Crossing Oregon-California State Line.

Mileage *pro rata*, allowing O. & C. R. R. constructive mileage of 25%, *i. e.*, on joint haul of say 300 miles, of which 100 miles was performed by O. & C. R. R., the O. & C. R. R. would receive 125–325 of the through rate.

In addition to above the O. & C. R. R. receives an arbitrary of 40 cents per ton on all freight crossing both the Oregon-California State Line and Willamette River Bridge at Portland.

Endorsed: Filed Sept. 23d, 1908. Southard Hoffman, Clerk, By W. B. Maling, Deputy Clerk.

Exhibit Miller No. 6.

626 The defendant objected to the incorporation of said affidavits in this statement, and the Court passed the objection to the Supreme Court for consideration.

Now, therefore, in accordance with the Statute in such cases made and provided, we, the judges of the Circuit Court of the United States for the Ninth Judicial Circuit, in and for the Northern District of California, do hereby certify the foregoing case to the Supreme Court of the United States for its determination, and hereby

certify that the foregoing is a true, full, and correct copy of all the papers filed in this case, and of the whole thereof.

WM. B. GILBERT,
ERSKINE M. ROSS,
WM. W. MORROW,
United States Circuit Judges for the Ninth Judicial Circuit.

Endorsed on cover: File No. 21,388. N. California, C. C. U. S. Term No. 592. Southern Pacific Company and Oregon & California Railroad Company *vs.* Interstate Commerce Commission. Filed October 28th, 1908. File No. 21,388.

In the Supreme Court of the United States.

OCTOBER TERM, 1908.

SOUTHERN PACIFIC COMPANY AND OREGON & CALIFORNIA RAILROAD COMPANY
v.
INTERSTATE COMMERCE COMMISSION.

No. 592.

CERTIFICATE OF THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

MOTION TO ADVANCE.

On behalf of the defendant, the Solicitor-General respectfully moves the court to advance the above-entitled cause for hearing during the present term, for the following reasons:

1. The cause is a proceeding in equity under section 16 of the act to regulate commerce, approved February 4, 1887, as amended June 29, 1906, brought by plaintiffs in the Circuit Court of the United States, to enjoin the enforcement of an order of the defendant against the plaintiffs, made under and by virtue of the provisions of said act.

2. On June 1, 1908, the Interstate Commerce Commission, after a hearing before it upon complaint, made an order reducing the rate to be charged by the Southern Pacific Company and Oregon and California Railroad Company for the transportation of rough green fir lumber and lath in carloads from points upon the east bank of the Willamette River and upon the west bank south of Corvallis to San Francisco, Cal., and bay points, from $5 to $3.40 per ton; and from points upon the west bank of said river north of said Corvallis to said San Francisco and bay points, not including Portland, Oreg., from $5 to $3.65 per ton. On July 24, 1908, the Southern Pacific Company and Oregon and California Railroad Company filed a bill of complaint against the Interstate Commerce Commission, praying the court to enjoin the enforcement of said order.

The court unanimously sustained the demurrer of the Interstate Commerce Commission to the original bill; whereupon, by leave of court, an amended bill of complaint was filed. The court was so divided in opinion that it was unable to enter a decree sustaining or overruling the demurrer of the Interstate Commerce Commission to the said amended bill. The case is pending in this court on such certificate of division of opinion. Meanwhile the rates prescribed by the Commission are in force and effect. In the amended bill of complaint it is charged that the act to regulate commerce, as amended, particularly the portion which

confers upon the Interstate Commerce Commission the power to prescribe rates for the future, is unconstitutional and void. The case involves the powers of the Commission, as well as the powers of the courts to review and supervise the action of the Commission in making rates for the future.

3. The speedy determination of the lawfulness of the Commission's order prescribing rates for the future and the extent to which the judicial power can supervise the action of the Commission, is a matter of great public importance.

4. The act to regulate commerce, approved February 4, 1887, as amended June 29, 1906, in section 16, makes the provisions of "An act to expedite the hearing and determination of suits in equity," and so forth, approved February 11, 1903, applicable to all such suits, and said section provides that cases of this character shall have in this court "priority in hearing and determination over all other causes except criminal causes."

I am authorized to state that counsel for the plaintiffs concur in this motion.

HENRY M. HOYT,
Solicitor-General.

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Supreme Court of the United States.

OCTOBER TERM, 1909.

Office Supreme Court, U. S.
FILED.
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JAMES H. McKENNEY,
CLERK.

No. 275.

SOUTHERN PACIFIC COMPANY AND OREGON AND CALIFORNIA RAILROAD COMPANY,

Complainants,

vs.

INTERSTATE COMMERCE COMMISSION,

Defendant.

CERTIFICATE OF THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

BRIEF FOR COMPLAINANTS.

F. C. DILLARD,
W. W. COTTON,
P. F. DUNNE,
Counsel for Complainants.

R. S. LOVETT,
Of Counsel.

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Supreme Court of the United States.

OCTOBER TERM, 1909.

No. 275.

SOUTHERN PACIFIC COMPANY, and OREGON AND CALIFORNIA RAILROAD COMPANY,
Complainants,

vs.

INTERSTATE COMMERCE COMMISSION,
Defendant.

CERTIFICATE OF THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

BRIEF FOR COMPLAINANTS.

This suit was instituted to enjoin the enforcement of rates fixed by the defendant Commission on lumber carried by the complainants from

points in the Willamette Valley in Oregon to San Francisco and adjacent San Francisco Bay points, in California.

On being ordered to show cause why a preliminary injunction should not issue, the Interstate Commerce Commission filed a demurrer to the bill of complaint. The Attorney-General filed the certificate provided for in the so-called expedition act, approved February 11, 1903 (record, page 29). As a result of this certificate the suit came on for hearing before Circuit Judges GILBERT, ROSS and MORROW, and the demurrer to the original bill was sustained (Record, page 32).

Whereupon, by leave of court, the complainants, on August 1st, 1908, filed their amended bill of complaint (record, p. 32). The Interstate Commerce Commission demurred to this amended bill of complaint (record, p. 51). The matter came on for argument upon the demurrer to the amended bill, and the three judges were divided in opinion as to whether the demurrer should be sustained; and as a result of such division of opinion, certified the entire case to this court as required by the expedition act and declined to grant the complainants any relief (Record, p. 53).

The order of the Commission sought to be set aside in this suit was made by the Interstate Commerce Commission in a proceeding instituted by the Western Oregon Lumber Manufacturers' Association and others against the Complainants. The order is set out in the amended bill of complaint (record, p. 35). By this order the Complainants are required to cease and desist on or before the 15th day of August, 1908, from charging for the transportation of rough green fir lumber and lath in carloads at the rate of $5 per ton from points upon the Willamette River in the State of Oregon to San Francisco, California, and Bay points, and are ordered to establish and put in force on or before the 15th day of August, 1908, and maintain in force thereafter during a period of not less than two years, and apply to the transportation of rough green fir lumber and lath in carloads, a rate not exceeding $3.40 per ton from points upon the east bank of said Willamette River, and upon the west bank thereof south of Corvallis, Oregon, to San Francisco, California, and Bay points, and a rate not exceeding $3.65 per ton from points upon the west bank of said river north of Corvallis to San Fran-

cisco and Bay points, not including in either rate Portland, Oregon, as a point of origin. By a further order of the Commission, the time when said rates were ordered to go into effect was extended until the 15th day of October, 1908 (record, p. 36). By "Bay points" is meant points along San Francisco Bay reached by water (Opinion, record, p. 19).

The opinion or report of the Commission is annexed to the amended bill as Exhibit A thereof (record, pp. 15–27). The prevailing opinion was written by Commissioner Prouty and concurred in by Commissioners Clements, Cockrell, Lane and Clark. A dissenting opinion, written by Commissioner Harlan, was concurred in by Chairman Knapp. The testimony taken before this Commission was also tendered in support of the bill by allegation in Article IX thereof (record, p. 46), and appears in the record (p. 55 *et seq.*).

Before setting out the allegations of the amended bill of complaint, it will be convenient to consider a general narrative of the case as stated in the report of the Commission. California is a consumer of fir lumber produced in that part of Oregon and Washington west of the

Cascade Mountains; and mills cutting this lumber are located in the Willamette Valley and at Portland and at points upon Puget Sound. Lumber produced at Portland and at points upon Puget Sound can reach San Francisco by vessels operating upon the Pacific Ocean, and upon arriving at San Francisco by water can there be loaded upon the cars and shipped by rail to points in the interior of California (record, p. 16). Prior to 1898 the complainants, operating a line of railroad from Portland to San Francisco and to points in the interior of California, made no attempt to meet ocean competition in the carriage of lumber to San Francisco and points adjacent to San Francisco Bay (record, p. 16). Prior to 1898 no lumber was cut in the Williamette Valley except such as was necessary to supply the local consumption (Record, p. 16). In 1899, the Booth-Kelly Lumber Company, one of the complainants in the proceeding before the Commission, acquired sawmills in the Willamette Valley, and purchased some timber land from the Southern Pacific Company. For the purpose of introducing Willamette Valley lumber into San Francisco and Bay points, the complainants established

in 1899 a rate of $3.10 per ton from that part of the Willamette Valley in which the Booth-Kelly lumber mills were located, but soon extended the rate to the entire Willamette Valley, including Portland. Under the stimulus of this rate, the lumber business in the Willamette Valley rapidly developed, and many mills sprang up, until the industry has reached very considerable proportions, there being in this Valley, exclusive of Portland, over 250 mills with a capacity of 1,300,000 feet per annum (record, p. 18). In the latter part of 1903 the $3.10 rate was withdrawn from Portland, and in January, 1904, the rate was withdrawn from the entire Willamette Valley and a $5 rate was established instead. This rate remained in effect until May, 1904, when the $3.10 rate was restored from all Willamette Valley points except Portland, and except from points on the west bank of the Willamette River north of Corvallis, from which an additional charge of 25 cents a ton was imposed (Record, pp. 18 and 16). The $3.10 rate was intended to meet the water rate from Portland and applied only to San Francisco and other Bay points which could be reached by water (Record,

p. 19). In April, 1907, the complainants raised the $3.10 rate to $5, thus making the same rates from the Willamette Valley to San Francisco and San Francisco Bay points as were made to the same points from Portland (record, p. 15). As a result of the restoration of the $5 rate, Portland and all other Willamette Valley points had equal rates to San Francisco and San Francisco Bay points and interior California points. Both the mills at Portland and the mills in the Willamette Valley ship lumber east, and the rates from the Willamette Valley to various eastern points are the same as from Portland, as a rule, and usually the same as from mills in Washington upon the west of the Cascades (record, pp. 19, 20). In 1907, 7,108 cars of lumber moved from the Willamette Valley to eastern points via Portland, and 5,436 cars of commercial lumber moved south to California through Ashland. Of the lumber moving south about 20 per cent. moved under the $3.10 rate. Therefore, out of a total shipment from the Willamette Valley of 12,544 cars, 1,087 were affected by the rates involved in this proceeding and in the proceeding before the Commission (record, pp. 20, 21).

As shown by the entire opinion of the Commission, the $5 rate was not set aside because it was unreasonable in itself, and the $3.40 rate was not established because it was regarded as a reasonable maximum rate, but because lumber mills had been established in the Willamette Valley on the belief that rates would be made from the Willamette Valley to San Francisco Bay points sufficiently low to meet ocean competition from Portland, and because if such water competitive rates from Portland were not made from the Willamette Valley, the profits of the Willamette Valley saw-mills would be substantially reduced. It is not claimed, however, that the complainants were under contract with any shipper, or any general body of shippers, to maintain water competitive rates from the Willamette Valley. Upon this point the Commission says (record, p. 23):

> "It is not claimed that the defendants were under contract with any one shipper, nor with the general body of shippers in that region to maintain the $3.10 rate. It is doubtful if such a contract would be valid, and at any rate no such contract was ever made. While the defendants announced

> that they would establish a rate of $3.10, they never stated that they would maintain this rate in effect for any given length of time."

The $3.40 rate was established by the Commission for the purpose of meeting ocean rates from Portland, the advance of 30 cents allowed by the Commission being based upon the fact that water charters had increased. Upon this point it is said (record, p. 25):

> "It has been seen that this timber in the Willamette Valley must be given a rate to San Francisco which is substantially equivalent to the water rate from Portland. All parties were originally satisfied that the $3.10 rate substantially met this condition. Water charters from Portland have ranged somewhat higher in the last few years than when this original rate was established; the testimony indicates from 25 to 50 cents per thousand feet. This being so, it seems reasonable that this lumber rate should be also somewhat advanced, and we think that for the next two years a rate of 17 cents per 100 pounds, or $3.40 per ton, might properly be charged."

Upon the trial before the Commission, it was insisted that the maintenance of the $5 rate would generally and permanently close the mills in the Willamette Valley. Upon this point, the Commission said (record, p. 21):

> "We can hardly agree to the claim of the complainants that the maintenance of the advanced rate would generally and permanently close these mills in the Willamette Valley. It would, in our opinion, very greatly diminish the profits otherwise obtainable from a prosecution of that business. It would limit the operations of these larger companies and would probably drive out of business for the time being many of the smaller ones."

Upon the subject of profits generally the Commission said (record, p. 21):

> "For the last ten years lumber operations upon the Pacific Coast have been wonderfully profitable, and these extraordinary profits have led to an abnormal development of the business. What is true of the whole coast is true of the Willamette Valley, but in a somewhat less degree."

All of the lumber from Willamette Valley points must, in order to reach San Francisco, be hauled over the Siskiyou Mountains, where the grades are exceedingly heavy and the cost of operation unusually high (record, pp. 21, 22).

> "Mills in the Willamette Valley are not situated near the river and are not therefore, as a rule, upon the main line of the defendants, but are reached by short branch lines of different lengths. The service of collecting this lumber and putting it into trains of the defendant upon its main line is, therefore, a somewhat expensive one" (record, p. 22).

As shown by the affidavit of R. B. Miller filed in support of the amended complaint (record, p. 336), the average distance over which the lumber moves from the Willamette Valley to San Francisco is 668 miles, and therefore the rate of $3.10 gave the appellants a return of less than 5 mills per ton per mile, and the rate of $3.40, established by the Commission yields but a trifle more than 5 mills per ton per mile.

That the $5 rate was regarded in and of itself as a reasonable rate is shown by the following proceedings had at the outset of the hearing be-

fore the Commission, Mr. Teal being the attorney for the complainants in that proceeding (record, p. 57):

> "COMMISSIONER PROUTY: Let me ask you, Mr. Teal, this question. Suppose that rate had never been lower than 25 cents a hundred pounds, which is $5 a ton, would you claim that this Commission to-day ought to reduce that rate?
>
> "MR. TEAL: No; I don't think I would.
>
> "COMMISSIONER PROUTY: That is to say, you do not claim the rate is unreasonable in itself?
>
> "MR. TEAL: No, I do not.

The allegations of the amended bill of complaint are, in substance, as follows:

(*a*) That the Interstate Commerce Act in so far as it empowers the Commission to prescribe rates to be observed as maxima is unconstitutional, upon various grounds which will be considered in the following argument.

(*b*) The report and order of the Commission were made an exhibit to the amended bill and it was charged that it affirmatively appeared from the report that the Commission

found the rate of $5 per ton to be a reasonable rate for the service rendered; that it affirmatively appeared that the rates established by the Commission were unreasonably low; and that it set aside the rate of $5 per ton and established the lower rates because of matters extraneous to the question of the reasonableness of the rates; that on account of the circumstances under which the lower rate was first established by the railroad the Commission restored the rate, and thereby undertook to enforce a contract, express or implied, between the railroad company and the persons first seeking the rate, or to enforce an estoppel against the railroad on account of its conduct, irrespective of the question of the reasonableness of the rate, and that this was outside of the power of the Commission.

(*c*) That on the hearing before the Commission it was conceded by complainants that the rate of $5 per ton was in and of itself a reasonable rate and that no demand would have been made for its reduction if the lower rate had not been originally established; that the evidence introduced on the trial of the cause before the Commission showed without dispute that the rate of

$3.10 per ton was an unreasonably low rate and that the rate of $5 per ton was a reasonable rate.

(*d*) That the rates established by the Commission are unreasonably low rates and will not pay the actual cost of the service rendered in hauling the lumber, and facts were pleaded in considerable detail in support of these allegations.

(*e*) That if the rates established by the Commission were permitted to go into effect and not ultimately set aside by the court complainants would suffer irreparable injury in that they would never be able to recover the difference between a reasonable rate and the rates established by the Commission.

The Commission demurred to the amended bill on the following grounds chiefly:

(*a*) It appeared from the face of the bill that the order was made after a full hearing before the Commission; that it did not appear that the conclusion of the Commission was arbitrary or reached through fraud, and hence the order was

final, conclusive, and not reviewable by the courts.

(*b*) It did not appear from the bill that the rates established by the Commission were unreasonably low, nor did it appear wherein the rate of $5 per ton was reasonable.

(*c*) The bill failed to state any facts from which the court could conclude that the rates complained of were unreasonably low or confiscatory.

(*d*) Wherein the bill alleged the unconstitutionality of the law it stated no ground for equitable relief.

Specification of Errors.

1. The court erred in not overruling the Commission's demurrer and setting aside its order, because the Act conferring upon the Interstate Commerce Commission power to fix rates is unconstitutional in that it delegates the power to legislate, which under the Constitution is confined to Congress alone.

2. The court erred in not overruling the demurrer and setting aside the order of the Com-

mission, because the Act conferring power on the Commission to fix rates is unconstitutional, in that it unites in one body functions which are legislative, judicial and executive in character and are so intermingled that one cannot be permitted to stand, while the others are taken away.

3. The court erred in not overruling the demurrer and setting aside the order of the Commission, because the machinery provided by the Interstate Commission Act for a judicial review of a rate fixed by the Commission is so rigid, and so restricted in operation, and the penalties imposed for a failure to adopt the rate fixed are so severe as to amount to a deprivation of the carrier's property without due process of law.

4. The court erred in not overruling the demurrer and setting aside the order of the Commission, because it appears from the report and order of the Commission that it did not find the rate reduced by it to be unjust or unreasonable in itself, or more than fair compensation for the service rendered. On the contrary, the report shows that the Commission found the rate reasonable in itself, and reduced it for causes extraneous

to the question of its justness and reasonableness. The report further shows that the Commission did not find the rates to which the reductions were made to be reasonable, but on the contrary found them to be less than a fair remuneration for the service rendered. In reducing the rate after these findings the Commission exceeded any power conferred upon it by law, because, aside from the question of discrimination, when a carrier fixes a rate which is just and reasonable for the service performed the Commission is without power to reduce it.

5. The court erred in not overruling the demurrer and setting aside the order of the Commission, because the bill alleged, and the demurrer admitted, that the undisputed evidence before the Commission showed the rate established by it to be unreasonably low and the rate fixed by the carrier and reduced by the Commission to be just and reasonable. The evidence so showing, the Commission was without power to make any reduction.

6. The court erred in not overruling the demurrer and setting aside the order of the Commission, for the bill alleged, and the demurrer

admitted, that the rates fixed by the Commission would not pay the cost of the service rendered in carrying the lumber to which the rate applied. To force the carrier to so carry under order of the Commission, and to refuse it the benefit of a judicial inquiry, is to deprive it of its property without due process of law.

7. The court erred in not overruling the demurrer and setting aside the order of the Commission, because the bill alleged, and the demurrer admitted, that the order of the Commission forced the carrier to carry the lumber for less than a reasonable rate. To force it to so carry is to devote its property to public use without just compensation.

8. The court erred in not overruling the demurrer, and if, upon overruling it, it did not set aside the order of the Commission, in not proceeding to try the case upon evidence to be introduced; for the Interstate Commerce Act provides for an inquiry by the courts into the reasonableness of a rate fixed by the Commission, and in so doing intends that the court making such inquiry shall try the case under the general principles of equity and shall determine for itself the reasonableness of the rate.

BRIEF OF ARGUMENT.

I.

The case is one proper for certification to this court.

The position was taken in the Court below by counsel for the Commission that unless the judges were unanimous in their opinion, no judgment could be rendered. It was pressed upon the judges that even if two of them concurred in all things in passing upon the demurrer but the third dissented, they were powerless to do aught under the statute but send the whole case to this court. Notwithstanding this position it has been suggested by counsel for the Commission that the case is not one proper for certification in that no division of opinion existed within the meaning of the statutes.

We understand the basis of the suggestion to be that the Expediting Act (Act of February, 11, 1903) when referring to a division of opinion among the judges has applicability only when there is an even number of judges sitting who are equally divided in opinion; that there can be no division of opinion when there are three judges.

The language of the act is:

> "In the event the judges sitting in such case shall be divided in opinion, the case shall be certified to the Supreme Court for review in like manner as if taken there by appeal as hereinafter provided."

This statute was made applicable to all suits brought to enjoin or set aside orders by the Commission, by Section 16 of the Act to regulate commerce as amended in Section 5 of the Hepburn Law.

It is unnecessary to cite cases to show that the term, "divided in opinion," is used whenever there is a difference of opinion among the members of the court, though one opinion is held by the majority and another by the minority. Indeed the term is ordinarily so understood among judges and lawyers. A further explanation would be needed before the language would convey even to the technically trained mind the meaning that there was an equal division of opinion. It is true the expression is sometimes used to indicate such division, as in the case of *Etting vs. The Bank*, 11 Wheat., 59, but it is equally true that it is far oftener used in the other sense; and it is worth

while to note in passing that this Court frequently uses the phrase "equally divided in opinion," a needless expression if "divided in opinion" is restricted to this meaning.

The law dictionaries recognize diverse uses of the term, *e. g.*:

Black's Law Dictionary, page 382, thus defines "division of opinion":

> "In the practice of appellate courts, this term denotes such a disagreement among the judges that there is not a majority in favor of any one view, and hence no decision can be rendered on the case. But it sometimes also denotes a division into two classes, one of which may comprise a majority of the judges; as when we speak of a decision having proceeded from a 'divided court.'"

See, also, *Bouvier's Law Dictionary*, Rawle's Revision, p. 593.

Neither is assistance derived from the former practice under Sections 651 and 652, U. S. R. S., concerning the certification of a division of opinion of the judges of the Circuit Court in ordinary civil and criminal cases, since those sections referred to cases in which two judges

constituted the court and any division of opinion was necessarily an equal division of opinion.

Considering the term in its narrower sense as meaning such a division as will prevent a decision, it by no means follows from the fact that that there are three judges that there can be no division of opinion. There may have been no principle of law sufficient for the disposition of the case on which all the judges agreed. To illustrate: One judge might have been of the opinion that the Commission acted within its jurisdiction in this case, and that the order of the Commission when so acting was conclusive, except in the event of a showing that the rate would be confiscatory when considered with regard to the entire business of the carrier, and that, this not appearing in the present bill and the Statute being nevertheless constitutional, the demurrer should be sustained. The opinion of the second judge might have favored the overruling of the demurrer on the ground that the Commission acted irregularly and beyond its jurisdiction, although concurring in all other respects with the first judge. The third judge might have been able to form no opinion upon any of the points involved

except that the statute made the order of the Commission conclusive and was therein unconstitutional. In case of such a disagreement of views any decision by the court would be manifestly impossible. Other illustrations might be given but this is sufficient to show that three judges may be "divided in opinion," using the term in its most restricted sense.

The certificate is as follows:

> "The matter coming on for argument upon the demurrer to the said amended bill of complaint, and the same having been fully argued, the Court was divided in opinion as to whether said demurrer should be sustained" (Rec., p. 53).

It must be assumed that the certificate is true; that there was no common ground upon which the judges could meet; and, if necessary, that there was no common ground upon which any two of them could meet.

II.

It was alleged in the bill and admitted by the demurrer that the rates in suit were not found by the Commission to be a just and reasonable compensation for the service rendered, but were fixed by the Commission to correspond with competitive rates for water transportation and to enforce against the complainants an alleged estoppel. By this action the Commission exceeded its authority and jurisdiction.

The allegations of the bill, the report of the Commission, and the evidence taken before the Commission, all show conclusively that the rates established by complainants were not unjust or unreasonable rates for the service rendered and that the rates established by the Commission were not just and reasonable rates, but were established upon grounds having no relation to the question of a fair compensation for the service rendered.

Paragraph VIII. of the amended bill alleges as follows (Record, p. 43 :

> "The Commissson did not adjudge the rate established by your orators under their

tariff effective April 18, 1907, to San Francisco and Bay points to be unreasonable in itself as applied to the carriage of rough green fir lumber and lath, or greater than is warranted by the cost and value of the service rendered; but did find a rate of $3.10 to be a low rate. The Commission raised the rates from $3.10 and $3.35 to $3.40 and $3.65 respectively, but made this slight raise only because there had been some increase in charter rates, and held, as indeed the truth is, that the rates are substantially the same as the former rates. They held that the rates in existence prior to April 18, 1907, had been established by your orators, under the circumstances shown in paragraph VII. above; that on the faith of these rates the lumber industry had been developed in the Willamette Valley, and that your orators were therefore estopped from making an advance in the rates as made by them."

It is alleged in paragraph IX. of the amended bill (Record, p. 45) as follows:

"Your orators aver that upon the hearing of the complaint before the Commission, it was conceded by complainants that the rate of $3.10 was a low rate, one of the lowest rates on lumber in the United States. It

was also conceded that the rate of $5. was, in and of itself, a reasonable rate and that demand would not have been made for its reduction if the lower rate had not been originally established. The evidence introduced on the trial of the cause before the Commission showed that the former rate of $3.10 was an exceedingly low rate; that the rate of $5. is in and of itself a reasonable rate for the service performed, and nothing appeared to the contrary."

The truth of these allegations is admitted by the demurrer.

An examination of the report which was made a part of the bill of complaint fully sustains these allegations. The report discusses at considerable length the circumstances under which the rate of $3.10 was established in the Willamette Valley and which, in a general way, have been pointed out in the opening statement of this brief. Among other things, referring to the purchase by Mr. Booth of certain land from the Southern Pacific Company, the Commission says:

" Mr. Booth testified—and there can be no doubt of the fact—that previous to the

making of this contract and as the basis of all his operations it was understood between him and the railroad company that a rate to San Francisco should be put in and maintained which was fairly equivalent to the water rate from Portland and that he should also be given a rate *via* Sacramento to various eastern points in Idaho, Utah and Colorado. In accordance with this understanding the Southern Pacific established in 1899 a rate of $3.10 per ton upon lumber to San Francisco and bay points" (Rec., p. 17).

Further the Commission says:

"Water charters from Portland have ranged somewhat higher in the last few years than when this original rate was established; the testimony indicates from 25 to 50 cents per thousand feet. This being so it seems reasonable that this lumber rate should be also somewhat advanced, and we think that for the next two years a rate of 17 cents per hundred pounds, or $3.40 per ton, might properly be charged" (Rec., p. 25).

These quotations alone show that the Commission fixed the rate, not according to the value

of the service rendered, but on account of what occurred between Mr. Booth and the Southern Pacific Company at the time the rate was inaugurated. Note the evidence of this in the Commission's statement that it was Mr. Booth's understanding that the rail rates should bear some relation to the water rates, and, since the charter rates had been raised, in their action in proceeding to proportionately raise the rail rates. There is no inquiry here as to what is a reasonable rate for the service performed by the carrier, but there is a finding that there was an understanding with one shipper that the rail rate should bear relation to the water rate, a further finding that the charter rates have been raised, and thereupon an adjustment of the rail rate in relation to the water rate and in accordance with Mr. Booth's understanding.

The Commission in so many words says:

> "The $3.10 rate was certainly a low one" (Rec., p. 22).

The Commission finds that the complainants were not under contract with one shipper or any body of shippers, but state what occurred at the time the rate was inaugurated, and it is

evident that because of what then occurred the rate last established by the carriers is reduced. The position of the Commission is summed up in its illustrative case, which it state as follows at p. 25:

> " No argument and no citation of authority can, however, add to the naked statement of the fact. Take, for example, the case of Mr. Miles. This gentleman had established a mill upon the strength of the $3.10 rate, which he was operating in the year 1903. He had also made arrangements for the building of another mill and for the purchase of a large tract of timber. Hearing rumors that this rate was to be withdrawn, he suspended his operations. Subsequently, upon being assured by the officials of the Southern Pacific Company that it would continue its former policy, and relying upon the restoration of the rate itself, he resumed the construction of his mill and completed the purchase of his timber. Is it just and reasonable that within less than three years this company shall be allowed to again reverse its policy and to destroy the value of this man's property? We think not; the tremendous interests involved in the stability of railway rates must not be juggled

with in this manner. We do not hold, as a general proposition, that a railroad company having established and maintained a rate is conclusively estopped from advancing that rate, nor that where a rate is put in for a special purpose it may not be taken out when that purpose has been subserved and new conditions have grown up. We apply our decision entirely to the facts in the case before us. Considering all the circumstances, having in mind the just interest of all parties, we conclude that these defendants ought to maintain, for the immediate future at least, substantially the same rate which they have maintained in the past."

It is true, at page 26 the Commission says:

> "We are of the opinion, then, that the present rate of $5 from all mills in the Willamette Valley, not including Portland, is unjust and unreasonable."

But this declaration must be read in connection with the remainder of the report, and so reading it, it becomes apparent that the Commission finds the rate unjust and unreasonable for the reasons set forth in the report and shown above and not because it is more than fair compensation for the service rendered.

The ground on which the Commission based its opinion is thus stated in the dissenting opinion of Mr. Commissioner HARLAN and concurred in by Chairman KNAPP:

> "The $3.10 rate is conceded to have been a low rate, and I do not understand that the present rate of $5.00 is condemned in the opinion of the Commission as unreasonable in itself and apart from the matters of estoppel on which the opinion seems largely to rest. * * * When preference and discriminations are not alleged, the test of the lawfulness of a rate is whether as a rate for the service offered it is reasonable or excessive. This is not the test to which the rate complained of in this proceeding has been subjected as I read the opinion. It is not held to be unlawful on the ground that it is an excessive rate, but is reduced rather because of certain supposed equities existing between the complaining shippers and the defendant carriers" (p. 27).

That the Commission could not have found the rates established by complainants unreasonable clearly appears by admissions contained in the testimony taken before the Commission. The following occurred during the opening

statement of counsel for the complaining shippers (p. 57):

> "MR. TEAL: $3.10 a ton; yes, 15½ cents a hundred; and I will state that we do not claim that that is not a low rate. It is a low rate. In fact, I may say it is one of the lowest rates on lumber in the United States, and it was a rate put in, as I state, maintained for the purposes I state, and the railroad company is entitled to full credit for having done it.
>
> COMMISSIONER PROUTY: Let me ask you, Mr. Teal, this question. Suppose that rate had never been lower than 25 cents a hundred pounds, which is $5 a ton, would you claim that this Commission to-day ought to reduce that rate?
>
> MR. TEAL: No; I don't think I would.
>
> COMMISSIONER PROUTY: That is to say, you do not claim the rate is unreasonable in itself?
>
> MR. TEAL: No, I do not.
>
> COMMISSIONER PROUTY: You put your case entirely on the ground that these people represented to your clients and to other mill men in the Willamette Valley that they would establish this lower rate for the purpose of building up the industry in that

valley, that the industry cannot exist there in competition with other sections unless that rate is maintained in effect?

MR. TEAL: Yes, sir.

COMMISSIONER PROUTY: And therefore the railroad is obliged to maintain it in effect?

MR. TEAL: It has been maintained for eight or nine years. You have my position exactly, Mr. Commissioner.

COMMISSIONER PROUTY: That simply shows that it has been maintained and industries have grown up; that the railroad company has, during that period, elected to maintain it and found it profitable, probably?

MR. TEAL: You have stated my position exactly. I am not here complaining about the rates being high or low, because it is a low rate."

It is true that Mr. Teal apparently makes a modification of his admission at page 63 of the record. But the modification is only apparent, not real. He explained himself at page 65 of the record, saying:

"Mr. Prouty asked me a question to the effect if the rate had been in effect fourteen years, what I would be here claiming. I do

not claim that the five dollar rate is a reasonable rate in and of itself, because the five dollar rate commences from the California state line."

This was the only modification of his position, but the California state line is over 200 miles below the most southern point in the Willamette Valley, so that it stands conceded that the $5 rate from Willamette Valley points is reasonable in and of itself.

It thus appears that the question which is sharply raised for the decision of this court is: When a rate is just and reasonable in itself, can the Commission reduce it to a formerly existing rate, admittedly low, on account of statements made by a carrier when the rate was established? In seeking the answer to this question we desire to inquire, first, what are the powers granted the Commission under the Interstate Commerce Act: second, to view the question in the light of the decisions bearing more pertinently upon it.

Section 15, from which alone can be derived the authority to establish rates, provides that after complaint made and full hearing had it shall be the duty of the Commission, if of the opinion that

the rates demanded or collected or the regulations or practices of the carrier affecting the rates, are unjust or unreasonable, or unjustly discriminatory, or unduly preferential or prejudicial, or otherwise in violation of the Act, to determine and prescribe what shall be the just and reasonable rate or charge to be thereafter observed as a maximum, and what regulation or practice in respect to the transportation is just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier shall desist from the violation of the Act and publish the new rates or charges.

The section is carefully worded to forbid any initiative on the part of the Commission. It is so drawn as to restrict their powers to the very things authorized to be done in this section of the Act. The conditions under which the Commission may reduce a rate are, when after complaint and full hearing it finds it to be (1) unjust or unreasonable, (2) unjustly discriminatory, (3) unduly preferential or prejudicial, (4) *or otherwise* in violation of any of the provisions of the Act.

The words, " or otherwise in violation of any of the provisions of the Act " show that the pre-

ceding words must be taken in the sense in which they are elsewhere used in the Act, and must be construed in the light of the wrongs there prohibited, the duties there enjoined.

Section 1 provides in part as follows:

> "All charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, shall be just and reasonable; and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful."

The pertinent part of section 3 is as follows:

> "That it shall be unlawful for any common carrier subject to the provisions of this Act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

When section 15, therefore, declares that the Commission shall determine whether a rate is unjust or unreasonable, it uses the language in the same way it is used in the parts of sections 1 and 3 quoted.

Section 1 is, "All charges for any *service rendered* shall be just and reasonable" and further that an unreasonable charge for *such service* is unlawful. The measure of the reasonableness of the rate is the service performed. If, for the service rendered, the rate is no greater than it ought to be, it is not unreasonable; if, for the service rendered, it is greater than it ought to be, it is unreasonable.

By the service performed must the reasonableness of the rate be determined. If, however, the Commission determines that the service in and of itself is worth so much; that the rate charged is no more than this, but in the years long gone by the carrier agreed to take the traffic at a smaller rate; and fixes the rate on account of this agreement, it is determining the reasonableness of the rate, not by the service to which the law confines it, but by something said or done in the long ago, which

the law has not made an element to be considered in fixing a rate.

Examining the statute further, it says the rate may be corrected if it is unduly preferential or prejudicial. What does this mean? That a contract has been entered into, or a promise given, or an agreement made, or a statement uttered, or a thing done, by which some individual shipper had the right to expect the continuance of the rate at the figure at which it was pla ed when the promise or agreement was made or understanding had? Such contention is untenable. We look to section 3 and the true meaning of these words becomes apparent. We there find it to be unlawful for the carrier to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic in any respect whatever. The section then adds, that such person, traffic, etc., must not be subjected to any undue or unreasonable prejudice. This, then, plainly is the meaning of section 15: That all persons similarly circumstanced, all places similarly circumstanced, all traffic similarly circumstanced, must be placed on an equality.

When the conditions are the same, the same rule must be applied. If, the conditions being the same, a different rule is applied to two different persons or places, or species of traffic, one of them is given an undue preference, the other subjected to an undue disadvantage. Let us give an illustration which will make this plain. There are two sets of shippers in two localities handling the same articles of freight, and, all points, similarly situated as regards the transportation of their freight. They reach the same market at the same distance over different branches of the same line. There is to the freight, the transportation, the market, difference between them. At one place the carrier has established a given rate quite low, and at the time of establishing it made statements indicating a policy that the rate should kept low. At the other place, at a much later date, the same rate was put in, but no statement whatever was made as to it, and nothing was said or done from which the shippers at this place could insist that the carrier had adopted a policy of maintaining this rate from their point of supply. The carrier raises the rates from both places to the same figure.

Complaint is made by both sets of shippers. The Commission finds the rates last fixed by the carrier to be reasonable in and of themselves, finds, in the language of section 1, that they are just and reasonable for the service rendered. It cannot, therefore, reduce the rate from the point where no promise was made at the time it was established because the rate is just for the service rendered and no promise has been given the shippers by virtue of which they may reduce it. At the other place the rate is reduced, not because it is unreasonable for the service rendered, but on account of the promise made. In this manner the competitive market of the shippers who hold no promise is destroyed and given over to the shippers who do hold one.

Does it not thus appear, with clearness, that in fixing a rate on this principle, the Commission is not abiding by the Act, but departing from it, not bringing about that equality between shippers and localities which the law was enacted to secure, but establishing the very inequaliy which the law forbids ?

A consideration of the reasons that led to the enactment of the Interstate Commerce Law

shows the justice of the conclusions we have reached as to its meaning. It was charged that the carriers were guilty of favoritism; that to large shippers they gave rates unduly low; that they would make preferences in favor of certain localities; that contracts would be entered into for a long time with certain shippers or promises made them by which their freight would be carried at a less rate than freight carried for others. The law was enacted to break up everything of this kind. All favoritism was to be abolished. Notwithstanding any contract, notwithstanding any promise, all shippers were to be placed upon an equal footing. The law was not enacted for the benefit of any particular shipper, or to preserve any equities he might have growing out of promises made, but largely to do away with the effect of just such promises. It was enacted for the benefit of the shipping public at large. If an unreasonably low rate is preserved to any shipper by reason of promises or aught else, that interest is disregarded. Public interest demands that in so far as it can be accomplished all rates shall be reasonable. No rate for any cause should be lower than is reasonable, for if it is the rates on

other products must bear more than their just proportion of the expense of railway operation, and hence one set of shippers is made to bear burdens that should rest equally on the shoulders of all.

In *C. & L. Turnpike Company vs. Sanford*, 164 U. S., 578, 597, it is declared that in determining the reasonableness of a rate the interests both of the public and the carrier must be taken into consideration. The same doctrine is announced in *I. C. C. vs. Ry.*, 167 U. S., 479, 511, and, indeed, runs all through the decisions. It is the public whose interest is to be looked to, on one hand, the carriers on the other. The Interstate Commerce Act did not intend to go further than this. It did not intend to provide a remedy for enforcing contracts as to the maintenance of a rate, or for fixing rates on the ground of estoppel, irrespective of the reasonableness of the service rendered. In saying this we must not be understood as contending that the Commission cannot right the wrongs of a particular individual. On the contrary, it is altogether clear this can be done. But in doing this, the individual is to be considered as a part of the public. His wrongs are to be righted because the pro-

visions of the statute made for the protection of all the public apply to him as a member of the public and not because he is entitled to rely upon any contract or specific promise. The measure by which his wrongs are to be righted so far as the fixing of a rate by the Commission is concerned is the value of the service rendered and not a promise given.

We think the position we have taken is sustained by the decisions. The application for the preliminary injunction in *M. K. & T. Ry. vs. I. C. C.*, 164 Fed. Rep., 645, was made before three very able judges, who gave to the question much consideration and who already in *Stickney vs. I. C. C.*, 164 Fed. Rep., 638, had given much consideration to the Hepburn Act. They are careful to say in the *M. K. & T. Ry. case* that they state conclusions at which they have unanimously arrived. Among other conclusions are the following:

> "Neither Congress nor any legislative or administrative board acting by its authorization can competently establish rates for the transportation of property in interstate commerce that will not admit of the carrier earning such compensation *for the service*

rendered as under all the circumstances is just and reasonable to it and to the public, for that would be depriving the carrier of its property without due process of law and would be taking its property for public use without just compensation, in violation of the fifth amendment to the Constitution" (p. 647).

. . . . . .

"To be just and reasonable within the meaning of the constitutional guaranty, the rates must be prescribed with reasonable regard for the cost to the carrier of the service rendered and for the value of the property employed therein . . . " (p. 648).

. . . . . .

"Reasonably interpreted, the statute, by which alone the Interstate Commerce Commission derives its power, unmistakably requires that all rates prescribed thereunder shall be just and reasonable, within the constitutional guaranty, and also that they shall not be unjustly discriminatory or unduly preferential; and these requirements plainly operate as limitations upon the power of the Commission" (p. 648).

In the *Stickney Case* (164 Fed. Rep. 638) the same Judges had already recognized the principle

that a rate was not reasonable if it was too low for the particular service rendered. They there use this language:

> "It follows, we think, that the reduction of the terminal charge *below its cost or below its just and reasonable value* for the purpose of correcting the through rate was erroneous" (p. 643).

The strong language of section 9 of the Interstate Commerce Act is:

> "Any person . . . claiming to be damaged by any common carrier . . . may either make complaint to the Commission . . . or may bring suit in his . . . own behalf, for the recovery of the damages for which the common carrier may be liable under the provisions of this Act, in any district or circuit court of the United States of competent jurisdiction; but such person . . . shall not have the right to pursue both of said remedies, and must in each case elect which one of the two methods of procedure herein provided for . . . he will adopt."

Notwithstanding this language, this Court in *T. & P. Ry. vs. Abilene Oil Co.*, 204 U. S., 426,

decided that when a rate has been published by the carrier no matter how unreasonable it may be, no court can award damages to a shipper under the rate until the Commission has adjudged the rate to be unreasonable. The specific point decided was that the published tariff could not be departed from, but the underlying principle was that there must be uniformity of charges against shippers, as will appear from a reading of the opinion and as may be particularly noted at page 439, *et seq.* But whether a jury allows damages to a particular shipper by which he obtains a less rate than that extended to others by the published tariff, or whether by reason of statements made when a rate was installed one set of shippers is given a rate unreasonably low, the principle of the uniformity is equally transgressed. We cannot give too much heed to the language of the court that

> "unless the requirement of a uniform standard of rates be complied with, it would result that violations of the statute as to preferences and discrimination would inevitably follow" (p. 440).

The cases of *Armour Packing Co. vs. U. S.*, 153 Fed. Rep. 1, affirmed in 209 U. S. 56, *C. B.*

& Q. Ry. vs. U. S., 157 Fed. Rep. 830, *R. R. vs. I. C. C.*, 200 U. S. 361, are, we think, decisive in showing the incorrectness of the position taken by the Commission.

In the case first cited, the packing company made an agreement with the railway company to carry for it during a certain time packing house products from Kansas City to New York for export, at a certain rate then duly filed and published. The contract when made was in all respects lawful. Before the completion of the contract the railway company, without the packing company being in any way a party thereto, raised the rate and published it in its tariff. It continued, however, to fulfill its contract with the packing company and to carry its product until the expiration of the time for which the contract was made at the former rate. The packing company was indicted and convicted for receiving a rebate. There was great insistence by counsel that the contract when made was lawful; that the Interstate Commerce Law was not made for the purpose of overthrowing valid contracts; that it was not just or right that the packing company, which had made its sales on the strength of the contract, should be forced to pay a higher rate

by the *ex parte* act of the railway company in wrongfully raising its rates. These pleas were urged in vain.

The decision of the court, its reasoning, and the principles on which the decision was grounded, are all at war with the position of the Commission in this case. It was held that notwithstanding the contract was lawful when made, there must, as in all contracts, be read into it existing laws; that the law permitted the carriers to raise their rates so long as they were just and reasonable. When this was done, and the tariff published, it could not be departed from. This Court held that this was an absolute right in the carrier, and the effect of its holding was that any contract which would circumscribe this right would be contrary to public policy. The indictment and conviction were only for receiving a concession from the published rate, but back of this rests the principles that rates must be equal and uniform. The publication is but a method of securing equality and uniformity.

The Court said in part (209 U. S. 56, 80):

> "It is strongly urged that there is nothing in the acts of Congress regulating interstate

commerce which can render illegal the contract between the shipper and the railroad company covering the period from June to December, 1905. The contract, it is insisted, was at the legal, published and filed rate, and there is nothing in the law destroying the right of contract so essential to carrying on business such as the petitioner was engaged in. But this contention loses sight of the central and controlling purpose of the law, which is to require all shippers to be treated alike, and but one rate to be charged for similar carriage of freight, and that the filed and published rate, equally known by and available to every shipper."

The court further used this language at p. 81:

"It may be, as urged by petitioner, that this construction renders impossible the making of contracts for the future delivery of such merchandise as the petitioner deals in and that the instability of the rate introduces a factor of uncertainty, destructive of contract rights heretofore enjoyed in such property. This feature of the law, it is insisted, puts the shipper in many kinds of trade at the mercy of the carrier, who may arbitrarily change a rate, upon the faith of which contracts have been entered into. But

> the right to make such regulations is inherent in the power of Congress to legislate respecting interstate commerce, and such considerations of inconvenience or hardship address themselves to the lawmaking branch of the Government."

It is true the Commission found there was no contract in this case and that if there were it would be invalid. Nevertheless, it further found that there was an understanding or agreement by virtue of which the rates were originally installed and the milling business commenced in the Willmette Valley, and because of this agreement or understanding it forbade the raising of the rates. We submit that the Commission has placed itself in a position which cannot be maintained. It is this: If a definite contract had been made for the maintenance of the rate, as, for instance, if it had been put into writing and duly signed and sealed and delivered, it would be contrary to public policy, illegal, and unenforcible, but if there was no contract, recognized in law as such, but only an understanding as to the maintenance of the rates, this understanding can be enforced, and the Railway Company compelled to maintain the rate. In other words, a part

is greater than the whole. The completed contract would be without efficacy, but statements and promises which might have led to the making of a formal contract, or from which a contract might be implied, are to be availing. It is no answer to say that the Commission in forcing the railroad company to maintain the rate that was established in the beginning has not undertaken to specifically enforce a contract, but is merely establishing a rate which is reasonable because the statements were made and the industries were built because of them. This is a mere manipulation of words,—a juggling with terms. The thing done must be judged by the effect produced, and here the effect of the decision is the enforcing of the specific performance of an implied agreement.

III.

The bill alleged, and the demurrer admitted, that the rates fixed by the Commission would not pay the cost of the service rendered in hauling the lumber, to which the rates applied. To compel the carrier to carry at less than the cost of the service rendered is to deprive it of its property without due process of law and to devote its property to public use without just compensation, and the demurrer should therefore have been overruled.

Paragraph nine of the amended bill of complaint contains the following:

> " Your orators aver that the rates of $3.40 and $3.65 per ton as ordered and prescribed by said Commission were and are unreasonably low rates and will so continue to be during the period fixed for the application of the same by the said Commission, and are less than what is and will be during said period just and reasonable for the service rendered; and *the said rates do not and will not during said period pay the cost of the service rendered;* and that the rate of $5 per ton was, is, and will be for the period fixed by said Com-

mission, no greater than a just and reasonable rate for the service rendered in the transportation of rough green fir lumber and lath from points in the Willamette Valley to San Francisco, California, and Bay points" (Rec., p. 45).

It is true that the Commission states in its report (Record, p. 22), that "the $3.10 rate was certainly a low one, but we are satisfied that it did yield when established, has ever since yielded and would for the future yield a substantial return over and above the cost of operation." It does not appear from what source the Commission derived its satisfaction in this respect. There is no pretence that any evidence was taken upon this point, the concession of counsel for the complaining shippers having been deemed to render such testimony unnecessary. Undoubtedly the Commission's satisfaction was based upon a presumption drawn from the fact that the $3.10 rate had been maintained by the complainants for several years. This presumption is an improper one in any case and especially is its impropriety emphasized in the present case by the conceded fact of the increased cost of operation. But even if the conclusion of the Com-

mission above quoted had some evidence for its support it could not be held to overcome the allegation of the bill of complaint, that the rates established by the Commission do not and will not pay the cost of the service rendered under them. This allegation of the Bill is a positive allegation of fact and if such an allegation could be nullified by a finding of the Commission that the rates under review were reasonable or remunerative the Commission could in every case defeat judicial review of its orders.

There being then no question that the bill of complaint sufficiently alleges the confiscatory effect of the rates established by the Commission this effect is admitted by the demurrer. It follows necessarily that the Circuit Court should have overruled the demurrer to the bill. No consideration of the scope of the judicial review contemplated by sections 15 and 16 of the act to regulate commerce as amended by the Hepburn law was necessary if the bill properly alleged confiscation, since it has not been claimed and could not be seriously claimed that the federal courts are at all dependent upon the provisions of the act to regulate commerce or of the Hepburn law or any other statutory grant for jurisdiction

of a suit to enjoin the deprivation of property without due process of law.

The only answer of the Commission to the contention that the allegation that the rates established are not equal to the cost of the service required the overruling of the demurrer, is the proposition that a rate even less than the cost of the particular service is not confiscatory if the entire business of the carrier affords such a return as the law demands. The proposition is palpably unsound. If a carrier alleges that certain rates established by the Commission affecting a substantial part of its traffic are less than the cost of the service rendered in connection with that particular traffic, it has alleged in effect that it is deprived of a substantial part of its property without due process of law, and it would be absurd to require the carrier to make the further showing that no other part of its traffic was sufficiently profitable to balance the loss incurred by reason of the rates attacked. An individual may obtain legal redress for the deprivation of a part of his property without due process of law, even though there may remain to him sufficient property for his support. The carrier stands in no different position

as to its legal rights. The act to regulate commerce deals with the subject of individual rates rather than with the entire business and schedules of rates of any carrier, and the act in its whole scope is inconsistent with the theory that a carrier cannot defend against a proposed reduction of one of its rates by the Commission except by an accounting as to its whole business and proof that the single rate reduction in question would operate to reduce the aggregate return from its entire business below the amount which would constitute a reasonable return in its case. Indeed it would almost necessarily follow that if the carrier may be required to conduct a portion of its business at a loss some other portions of its traffic must be producing more than their proper share of the income and bearing therefore more than their legitimate burden. This contention of the Commission would have some tendency to encourage, if not create, such unjust and improper results.

This contention of the Commission was passed upon and condemned by three circuit judges of the Eighth Circuit. In the case of *Stickney vs. I. C. C.*, *supra*, at page 644, the court says :

> " Counsel for the Commission again suggest, rather than seriously argue, we think, that no rate prescribed by the commission for any service can be set aside or suspended unless the complaining carriers make it appear that the enforcement of the rate challenged will render the business of the carriers throughout their whole line unprofitable. Our attention is called to the case of *St. L. & S. F. Ry. v. Gill*, 156 U. S. 649, as authority for this suggestion. Without stopping to analyze the Gill case to show its inapplicability to the case before us, or to consider the proposition advanced by counsel at any length, we content ourselves by saying that it seems utterly untenable."

There has been quoted above the declaration of the court in *M. K. & T. vs. I. C. C.*, 164 Fed. 645, to the effect that if the rates are not reasonable for the particular service rendered, they violate the constitutional guaranties.

Worthy of notice in this connection is the recent case of *So. Ry. Co. vs. St. Louis Hay and Grain Co.*, 214 U. S., 297, where the court says at p. 301 :

> " If the stopping for inspection and reloading is of some benefit to the shipper and

and involves some service by and expense to the railway company, we do not think that the latter is limited to the actual cost of that privilege. It is justified in receiving some compensation in addition thereto. A carrier may be under no obligations to furnish sleeping or other accommodations to its passengers, but if it does so it is not limited in its charges to the mere cost, but may rightfully make a reasonable profit out of that which it does furnish."

But even conceding the Commission's theory that the bill does not sufficiently allege confiscation because it does not show that the effect of these rates upon the entire business of the complainants, the complainants would still be entitled to review the order of the Commission under the allegations made in the bill that the rates established by the Commission are unreasonably low. These allegations are positive and specific and are reinforced by the allegation that the rates are less than cost and by numerous details, in the nature of evidence, pleaded.

It seems unnecessary to consider whether a distinction exists between a confiscatory rate and one which is unreasonably low or non-remunera-

tive. This court appears to have intimated a doubt as to the existence of such a distinction as recently as the opinion in Railroad Commission of Louisiana vs. Cumberland Telephone & Telegraph Co., 212 U. S. 414, at 420. Assuming that the rates in suit are not sufficiently alleged to be confiscatory in that it does not appear that the complainant's entire business yields an inadequate return and that therefore the inherent jurisdiction of the circuit court could not be exercised to prevent a deprivation of property without due process of law, the bill unquestionably charges that the rates established are unreasonably low. The Commission, however, contends in the first and second grounds of its demurrer (Record, p. 51) that its order is final and conclusive in the absence of a showing of fraud, irregularity or arbitrary conduct, or confiscation in the Commission's construction of the term. This position is obviously unreasonable and untenable. The law provides that the Commission shall adjust only rates complained of, and provides for a judicial review of every order fixing rates. If there is only one rate complained of, and this is lowered, the law says it may be reviewed by the courts. But, under the contention of the Commission, allow-

ing this review is a meaningless form, for unless the rate confiscates the property of the railway in the sense that from the balance of its business it does not obtain a fair return, the rate is binding and the court cannot change it. Not only is this true, but, while the review is provided for in each instance, it will be unavailing in all instances until successive reductions in the rates have brought the revenue of the carrier to the confiscation point. This is an absurd construction of the statute.

The declaration of the law is that the Commission shall consider the justness and reasonableness of the rate fixed by the carrier, and, if it finds it unjust or unreasonable, shall itself fix one, just and reasonable; and from this action appeal is allowed to the courts. This review, then, is of what? Of the act and judgment of the Commission in fixing a rate. It is for what? That the court may consider the acts of the Commission, review its judgment, and if it finds the rate fixed not just or reasonable, suspend the order. This is made more apparent by a consideration of the fact that there was no necessity for any provision in the act for a judicial review, if all that is to be

done in such review is to determine whether the rate conflicts with rights secured by the Constitution. These rights are preserved to the carrier, and may be defended in the courts, without statutory provision. In accordance with the established jurisdiction of a Court of equity the carrier may at any time enter the court for the protection of its property against confiscation. The statute, therefore, must have meant to give some right additional to this. That right is to have the question of the reasonableness of the rate determined by the courts. The question of the reasonableness of a rate never ceases to be a judicial one.

Since the question of the reasonableness of a rate is a judicial one, the same power which appoints a Commission to fix rates may provide for a judicial review of the Commission's acts, though Constitutional rights are not invaded. This is just what Congress has done in its amendments of the act to regulate commerce.

As we have said, and now emphasize, if Congress intended that a rate should be reviewed only when infringing constitutional guaranties, there was no necessity to make provisions for such review. But as provisions for review were

made, we must presume they were made with a purpose and not assume that Congress was doing a needless thing. In Section Fifteen it is provided that the order fixing a rate shall take effect within such reasonable time as the Commission shall prescribe, being not less than thirty days, "unless the same shall be suspended or modified or set aside by the Commission, or be suspended or set aside by a court of competent jurisdiction." In Section Sixteen it is provided:

> "The venue of suits brought in any of the circuit courts of the United States against the Commission to enjoin, set aside, annul, or suspend any order or requirement of the Commission shall be in the district where the carrier against whom such order or requirement may have been made has its principal operating office, and may be brought at any time after such order is promulgated. * * * *And jurisdiction to hear and determine such suits is hereby vested in such courts.*"

Why this language? Why the designation of these special courts and the investing of them with power to enjoin, set aside, or annul the order? Why the right at any time after the order is pro-

mulgated, even the same day, to enter the court for the purpose of setting it aside? Because the whole theory of the amendment conferring jurisdiction upon the Commission to fix rates is to authorize them to fix as reasonable rates those which yield fair compensation for the service rendered, and the question of what this is, being judicial, the courts are made the final arbiters of it.

The authorities bear out this view.

In Louisiana, the constitution provided that a railroad commission was authorized to adopt just and reasonable rates, charges and regulations governing and regulating various corporations. It also provided that the corporation dissatisfied with the rate might "file a petition, setting forth the cause of objection, in a court of competent jurisdiction at the domicil of the Commission against said commission as defendant," and that either party might appeal the case to the supreme court. It is obvious that this provision does not measure up to the provisions of Sections 15 and 16 of the act to regulate commerce as a grant of a judicial review, but under these provisions this court held in *Railroad Commission of Louisiana vs. Cumberland Telephone & Telegraph*

Co., 212 U. S., 414, that the question of the reasonableness of the rate, aside from the qnestion of its being confiscatory in the sense in which that word is used by the Commission, might be inquired into, saying at page 420:

> "The single question before us is as to the character of the rates provided in Order No. 552, whether such rates are confiscatory, or, if there is any difference, whether the rates are only unreasonable, unjust and inadequate, although not confiscatory, and therefore not in violation of the Federal Constitution. The question under articles 284 and 285 of the constitution of Louisianna, *supra*, even of the unreasonableness of the rates, may be inquired into by a Federal Court, by reason of the diverse citizenship of the parties to this suit, and the complainant is not confined to a state court upon this question *Reagan vs. Farmers' Loan & Trust Co.*, 154 U. S., 362, 391. The complainant comes into court on both grounds, asserting that the rates are so low as to take its property in violation of the Fourteenth Amendment to the Federal Constitution, and also that the rates are so low as to be unreasonable and unjust under the above cited articles of the constitution of Louisiana.

In the case of *M. K. & T. vs. I. C. C.*, 164 Fed. Rep., 645, above cited, it is said at p. 648:

> "6. The statute under which the Interstate Commerce Commission derives its power to prescribe rates at all unequivocally recognizes, and, if there be need therefore, it plainly declares, that the circuit courts, sitting in equity, are vested with jurisdiction to entertain, hear, and determine suits to compel obedience to orders of the Commission prescribing rates, and also suits to annul or enjoin the enforcement of such orders. This is shown (*a*) by the provision in section 15 (Act Feb. 4, 1887, c. 104, 24 Stat., 384 [U. S. Comp. St., 1901, p. 3165], as amended by Act June 29, 1906, c. 3591, sec. 4, 34 Stat, 589, [U. S. Comp. St. supp. 1907, p. 900]) that 'all orders of the commission, except orders for the payment of money, shall take effect * * * and shall continue in force * * * not exceeding two years * * * unless the same shall be * * * suspended or set aside by a court of competent jurisdiction'; (*b*) by the provisions in section 16 that when any carrier fails or neglects to obey 'any order of the commission, other than for the payment of money,' while the

same is in effect, any party injured thereby, or the commission in its own name may apply to the circuit court for an enforcement of such order, and 'the court shall prosecute such inquiries and make such investigations, through such means as it shall deem needful in the ascertainment of the facts at issue, or which may arise upon the hearing of such petition'; (*c*) by the further provision in section 16 that 'the venue of suits brought in any of the circuit courts of the United States against the commission to enjoin, set aside, annul or suspend any order or requirement of the commission shall be in' designated districts, 'and jurisdiction to hear and determine such suits is hereby vested in such courts', and (*d*) by the still further provision in section 16 that the provisions of the expedition act (Act Feb. 11, 1903, c. 544, 32 Stat. 823 [U. S. Comp. St. supp. 1907, p. 951]), 'are hereby made applicable to all such suits, including the hearing on an application for a preliminary injunction, and are also made applicable to any proceeding in equity to enforce any order or requirement of the commission.' It is not conceived that the scope of the inquiry which the court is authorized to make, or the effect to be given to the commission's

finding or determination upon which its order is based, is intended to be in any wise different when the suit is one to annul or enjoin the enforcement of the order than when it is one to enforce obedience thereto.

7. It is not intended that the hearing in such a suit, whether it be of the one kind or the other, shall be confined to an ascertainment of what was determined by the commission and to a consideration of the sufficiency of the facts as determined by it to sustain the order; but, on the contrary, the hearing may be *de novo*, and may include the taking and consideration of evidence other than that before the commission."

That the findings of the Commission are entitled to the highest respect from the court is not to be doubted. That they are *prima facie* evidence of the facts found, if need be, may be conceded. That the complainants have the onus of showing the incorrectness of the findings and must make such showing clear, may, if necessary, be admitted. But all this does not contravene nor tend to contravene the fact, apparent from the Act as it is written and in the light which reason and the decisions shed upon it, that there is provided a judicial review where

the court's powers are not circumscribed by the Commission's findings, but it must determine for itself the question of the reasonableness of the rate.

IV.

The Act of June 29, 1906, in so far as it purports to authorize the Commission to determine and prescribe maximum rates to be observed by carriers is unconstitutional and complainants are entitled to enjoin the enforcement of the void order of the Commission issued thereunder.

The order of the Commission in this case directing complainants to establish and maintain for two years rates of $3.40 and $3.65 is made under the ostensible authority of section 15 of the act to regulate commerce, as amended by section 4 of the Hepburn law, which purports to authorize the Commission to fix and prescribe maximum rates to be charged by carriers. The constitutionality of this statutory grant has not been adjudicated by this court, although it is true that there are expressions to be found in the

opinions of this court which, considered alone, might justify the conclusion that the delegation to the Commission by Congress of the power to fix rates has constitutional warrant. No such expressions, however, were necessary to the decision of the cases in connection with which they were used, and while they carry the weight which must always attach to utterances in the opinions of this court even when unnecessary to the decision, there is no doubt that the question is still an open one. The unconstitutionality of the statute is clearly charged in the bill and the demurrer of the Commission to the bill cannot be sustained without passing upon this question.

A. *The statute does not confer upon the Commission a mere administrative or executive function but delegates legislative power or confers judicial power or both.*

While the legislative power of the United States is vested solely in Congress and cannot be delegated, Congress may declare the law and commit to an administrative or executive body or officer the duty and power to administer the law in its details. Thus Congress may enact that the free importation of specified articles shall

be suspended in the case of any country that imposes exactions upon products of the United States which the President finds to be reciprocally unreasonable and unequal, Congress prescribing in advance the duties which shall be levied upon such imports in the event that the President shall so find and proclaim (Field vs. Clark, 143 U. S., 649). So Congress may prohibit the importation of the lowest grades of tea as being demonstrably or presumably unfit for consumption and devolve upon the Secretary of the Treasury the duty of furnishing samples of standard grades of pure tea (Buttfield vs. Stranahan, 192 U. S., 486). So, also, may Congress provide for the removal of bridges which constitute unreasonable obstructions of navigation and commit to the Secretary of War the duty of finding the fact of such unreasonable obstruction (Union Bridge Co. vs, United States, 204 U. S., 364). Congress may also prohibit the use in interstate commerce of cars not equipped with drawheads of a standard height to be prescribed by the Interstate Commerce Commission (Railway Co. vs. Taylor, 210, U. S., 281). The principle upon which the cases cited were decided is that in each case Congress made the law

by fixing the primary standard or rule and devolved upon some executive or administrative officer or body the duty merely of finding or determining some fact upon which the enforcement of the law depended. In none of these cases was the executive officer or body vested with power to make the law. In every one of these cases there was an enactment of some law where no law before existed and in each the act of the administrative agency was purely ministerial, involving little exercise of judgment or discretion and no discretion whatever as to what the law itself should be.

In Buttfield vs. Stranahan, 192 U. S., 470, the Court says at p. 496 :

> "The claim that the statute commits to the arbitrary discretion of the Secretary of the Treasury the determination of what teas may be imported, and therefore in effect vests that official with legislative power, is without merit. We are of opinion that the statute, when properly construed, as said by the Circuit Court of Appeals, but expresses the purpose to exclude the lowest grades of tea, whether demonstrably of inferior purity, or unfit for consumption, or presumably so because of their inferior

quality. This, in effect, was the fixing of a primary standard, and devolved upon the Secretary of the Treasury the mere executive duty to effectuate the legislative policy declared in the statute. The case is within the principle of *Field v. Clark*, 143 U. S., 649, where it was decided that the third section of the tariff act of October 1, 1890, was not repugnant to the Constitution as conferring legislative and treaty-making power on the President, because it authorized him to suspend the provisions of the Act relating to the free introduction of sugar, molasses, coffee, tea and hides. We may say of the legislation in this case, as was said of the legislation considered in *Field v. Clark*, that it does not, in any real sense, invest administrative officials with the power of legislation. Congress legislated on the subject as far as was reasonably practicable, and from the necessities of the case was compelled to leave to executive officials the duty of bringing about the result pointed out by the statute."

Having due regard to these principles we submit that the Interstate Commerce Commission possessing the power and authority conferred by section 15 of the statute is not a constitutional

body. If the power of the Commission to fix rates is to be sustained it must be on the principle that Congress has already legislated as to what the rates shall be, has prescribed the rule for their determination and that the Commission is merely carrying out the details of the legislation.

Section 15 provides

> "that the Commission is authorized and empowered and it shall be its duty whenever . . . it shall be of the opinion that any of the rates or charges whatsoever demanded, charged or collected by any common carrier or carriers, . . . are unjust or unreasonable, . . . to determine and prescribe what will be the just and reasonable rate or rates, charge or charges to be thereafter observed in such case as the maximum to be charged."

Section 1 of the Act contains the declaration that

> "all charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, shall be just and reasonable; and every unjust and unreason-

able charge for such service or any part thereof is prohibited and declared to be unlawful."

The statute contains no other provisions bearing on the proposition now under discussion. The provision quoted from Section 1 of the statute is nothing but a declaration of the law as it previously existed. It is and always has been the law that all rates shall be just and reasonable and that all unjust charges are unlawful. The declaration that rates shall be just and reasonable cannot properly be held the establishment of a rule or standard by which the Commission shall abide within the meaning of the cases heretofore cited and similar cases. To enact that all rates shall be just and reasonable is not to prescribe a general rule or standard of rates; it is merely to declare that all rates shall be lawful. The effect of Section 15 as amended is to permit the Commission to determine what the lawful rates shall be with no standard or or primary rule for its guidance.

If in Field vs. Clark, *supra*, the power conferred upon the President had been the discretionary power to impose such import duties as he might deem just and reasonable in any case

instead of a power to find as a fact whether a foreign country was imposing reciprocal and equal duties that case would more nearly have resembled the present. If in Buttfield vs. Stranahan, *supra*, the Secretary of the Treasury had been authorized to prohibit the importation of such grades of tea as he might in his discretion deem proper instead of being authorized merely to procure and deposit samples of standard grades of pure tea that statute would have more nearly resembled the Commerce Act. The Union Bridge Co. case, *supra*, would constitute a closer precedent for the present case if the Act there involved instead of providing for the removal of bridges of insufficient height and width to permit free navigation, upon the finding of such fact by the Secretary of War, had invested the Secretary of War with discretionary power to prohibit the maintenance of any bridge which, in his opinion, was an unlawful structure. If, in Railway Co. vs. Taylor, *supra*, Congress had prohibited the use in interstate commerce of any cars except those which were equipped with such safety appliances and were of such size and construction as the Interstate Commerce Commission should deem just and

reasonable, instead of directing the Commission to perform the ministerial act of selecting a standard height of draw bars, that case might have governed the decision of the present case.

If the statutory prohibition of unjust and unreasonable rates is, as we believe, merely declaratory of the common law, it would seem that the function of the Commission is primarily to determine what common law principles apply in ascertaining the reasonableness of a rate and, having so determined what the law is, to apply it to the given state of facts and adjudge whether the rate under inquiry is reasonable. There is in this function nothing administrative or executive. To this extent the exercise of its power by the Commission is identical with that of a court.

But the power of the Commission does not stop here; under the authority of section 15 of the Act it directs that the rate which it has so adjudged to be the reasonable rate in any particular case shall be observed for a certain period in the future, and by the terms of the statute this direction becomes self-executing in the sense that penal consequences attach to its disobedience. Whether the power of the Commission in this respect shall be held to be judicial as in the

nature of an injunction or legislative it is probanot essential now to determine. Clearly the power is either legislative or judicial; it is not an executive or administrative function, for the Commission is called upon to exercise judgment and discretion of the highest order.

If, however, the just and reasonable rates prescribed by the statute are something different from the just and reasonable rates of the common law, and if the Commission is not to be guided by the principles inherent in the common law then the function of the Commission is either : (1) to determine what shall be the principles, rules, tests, or standards of reasonableness and to apply them to given cases, or (2) to fix and determine rates without regard to any principles, rules, tests or standards, but in the exercise of a purely arbitrary discretion in every case In either procedure under this view of the Act the function of the Commission is legislative in character involving the declaration and making of the law rather than the application and enforcement of any existing law. It is the exercise of a legislative prerogative of supreme delicacy and importance. In Interstate Commerce

Commission vs. Railway Company, 167 U. S., 479, this Court said at page 505:

> "We have, therefore, these considerations presented: First. The power to prescribe a tariff of rates for carriage by a common carrier is a legislative and not an administrative or judicial function, and, having respect to the large amount of property invested in railroads, the various companies engaged therein, the thousands of miles of road, and the millions of tons of freight carried, is a power of supreme delicacy and importance."

In the same case, at page 499, this Court said:

> "It is one thing to inquire whether the rates which have been charged and collected are reasonable—that is a judicial act; but an entirely different thing to prescribe rates which shall be charged in future—that is a legislative act."

This Court, in *Prentis et al. vs. A. C. L. Co.*, 211 U. S., 210, 226, used this language:

> "We shall assume, . . . that some of the powers of the Commission are judicial, . . . But we think it equally plain that the proceedings drawn in question here are legislative in their nature, and none the

less so that they have taken place with a body which at another moment, or in its principal or dominant aspect, is a court such as is meant by Section 720. A judicial inquiry investigates, declares and enforces liabilities as they stand on present or past facts and under laws supposed already to exist. That is its purpose and end. Legislation on the other hand looks to the future and changes existing conditions by making a new rule to be applied thereafter to all or some part of those subject to its power. The establishment of a rate is the making of a rule for the future, and therefore is an act legislative not judicial in kind, as seems to be fully recognized by the Supreme Court of Appeals, *Commonwealth v. Atlantic Coast Line Rv. Co.*, 106 Virginia, 61, 64, and especially by its learned President in his pointed remarks in *Winchester and Strasburg R. R. Co. and others v. Commonwealth*, 106 Virginia, 264, 281. See further *Interstate Commerce Commission v. Cincinnati, New Orleans & Texas Pacific Ry Co.*, 167 U. S., 479, 499, 500, 505; *San Diego Land & Town Co. v. Jasper*, 189 U. S., 439, 440.

B. *Whether the power attempted to be vested in the Interstate Commerce Commission is legis-*

lative, judicial, or both combined, the statute is unconstitutional.

(1)

By Article I., section 1, of the Constitution the legislative power of the United States is vested in Congress and this power cannot be delegated.

In Field vs. Clark, 143 U. S., at page 692, the court said:

> "That Congress cannot delegate power to the President is a principle universally recognized as vital to the integrity and maintenance of the system of government ordained by the Constitution."

In Wayman vs. Southard, 10 Wheat., 1, at page 43, the court said:

> "It will not be contended that Congress can delegate to the courts or to any other tribunals powers which are strictly and exclusively legislative."

(2)

By Article III., Section 1 of the Constitution, all judicial power of the United States is vested

in the Supreme Court and in such inferior courts as Congress may ordain and establish.

It is provided by the same section that the judges of the inferior courts as well as those of the Supreme Court shall hold their office during good behavior.

The Interstate Commerce Commission is not a a court within the meaning of this constitutional provision. While conducting its proceedings with all the forms of a court it cannot properly be invested with any of the judicial power of the United States. It is not one of the inferior courts ordained by Congress under the authority of the Constitution, for the members of the Commission do not hold their offices during good behavior, but only for a term of seven years (Hepburn law, Sec. 8). Only those courts created in the exercise of the authority given by Article III., Section 1, with the incident of judicial tenure during good behavior can be invested with the judicial power of the United States. Tribunals appointed by Congress under its power to govern the territories or under other powers conferred by the Constitution are not constitutional courts of the United States.

McAllister vs. United States, 141 U. S., 174.

This question was considered by Mr. Justice JACKSON in K. & I. Bridge Co. vs. L. & N. Railroad Co., 37 Fed., 612, and he there said:

"It is well settled that Congress in ordaining and establishing inferior courts and prescribing their jurisdiction must confer upon the judges appointed to administer them the constitutional tenure of office—that of holding during good behaviour before they can become invested with any portion of the judicial power of the government . . . In respect to interstate commerce matters covered by the law, the Commission may be regarded as the general referee of each and every Circuit Court of the United States upon which the jurisdiction is conferred to enforce the rights, duties and obligations recognized and imposed by the Act. It is neither a federal court under the Constitution nor does it exercise judicial powers nor do its conclusions possess the efficacy of judicial proceedings."

(3)

Under the Constitution legislative and judicial functions may not be vested in one body or person. If such a union of powers is attempted both powers fail, unless it appears that one is a

mere adjunct of the other and can be eliminated without interfering with the exercise of the other.

Western Union Tel. Co. vs. Myatt, 98 Fed., 335.

State *ex rel.* Goddard vs. Johnson, 61 Kansas, 803.

Kilbourne vs. Thompson, 103 U. S., 168, 190.

Railroad Co. vs. McChord, 103 Fed., 216.

Norwalk Street Railway Co.'s Appeal, 69 Conn., 576.

POINT V.

Upon the Commission's construction of the statute it is unconstitutional as withdrawing from judicial cognizance a question inherently judicial and so depriving complainants of their property without due process of law.

By the Commission's first ground of demurrer the position is taken that the orders of the Commission are final and conclusive in the absence of fraud or irregularity. If this were

the correct construction of the statute it would be clearly unconstitutional.

This court held that under the Minnesota statute, similar in terms to the interstate commerce act as amended by the Hepburn law, the question as to whether a rate was reasonable was a judicial question, and that therefore the Minnesota act was unconstitutional because, as considered by the Supreme Court of Minnesota, the findings of the commission were final and conclusive as to what were equal and reasonable charges.

In disposing of this question Mr. Justice BREWER said (p. 456):

> "This being the construction of the statute by which we are bound in considering the present case, we are of the opinion that, so construed, it conflicts with the Constitution of the United States in the particulars complained of by the railroad company. It deprives the company of its right to a judicial investigation, by due process of law, under the forms and with the machinery provided by the wisdom of successive ages for the investigation judicially of the truth of a matter in controversy, and substitutes therefor, as an absolute finality the action

of a railroad commission which, in view of of the powers conceded to it by the state court, cannot be regarded as clothed with judicial functions or possessing the machinery of a court of justice.

"By the second section of the statute in question, it is provided that all charges made by a common carrier, for transportation of passengers or property shall be equal and reasonable. Under this provision, the carrier has a right to make equal and reasonable charges for transportation. In the present case, the return alleged that the rate of charge fixed by the commission was not equal or reasonable, and the Supreme Court held that the statute deprived the company of the right to show that judicially. The question of the reasonableness of a rate of charge for transportation by a railroad company, involving as it does the element of reasonableness, both as regards the company and as regards the public, is eminently a question for judicial investigation, requiring due process of law for its determination. If the company is deprived of the power of charging reasonable rates for the use of its property, and deprivation takes place in the absence of an investigation by judicial machinery, it is deprived of the lawful

use of its property, and thus, in substance and effect, of the property itself, without due process of law and in violation of the Constitution of the United States; and in so far as it is thus deprived, while other persons are permitted to receive reasonable profits upon their invested capital, the company is deprived of the equal protection of the laws."

But further even if it be held that the orders of the Commission are not absolutely final and conclusive the right of judicial investigation as construed by the Commission is so limited and ineffectual that upon the Commission's construction the right of judicial review accorded would not constitute due process of law. Suits to enjoin the orders of the Commission must under the expediting act at the election of the Attorney-General be heard before three judges. The Commission contends that no decision can be rendered except by the unanimous concurrence of these three judges, and that in the case of a single dissent the case must be certified to this court and as a further proposition it is argued that no such certification is proper unless the circuit judges are equally divided in opinion thus precluding not only a decision by the

circuit court but also a review by this court. Pending an attempt to secure this judicial review so-called the carrier must either incur the risk of the penalties provided by the Act for a disobedience of the orders of the Commission which may amount to $20,000 for each offense, that is, for each carload carried for a rate other than that fixed by the Commission, or it must comply with the rate established by the Commission and suffer thereby a loss and damage which can in no way be recovered.

The experience of the complainants in this case furnishes an excellent illustration of the consequence of the construction of the law advanced by the Commission.

The order of the Commission went into effect on its own force on the 15th day of October, 1908, and following the procedure established by the 15th and 16th sections of the act, the complainants have been unable to enjoin such order, even temporarily, and have been unable to procure the decision of a court upon the question of the reasonableness of the rate involved in this suit. In order to avoid the fines imposed by the 16th section of the act, the complainants were compelled on the 15th day of October to put into effect the unreasonable rates ordered by the Interstate

Commerce Commission. If the complainants have a right to make a reasonable charge for their services, then it follows that since the 15th day of October, 1908, they have been deprived of such right without due process of law. During all of such period the finding of the Commission has been conclusive as to the sufficiency of the rates, and will continue to be so conclusive until set aside by this court. When the order of the Commission is set aside there is absolutely no way of restoring to the complainants the property of which they have been deprived as the result of the order of the Commission. The practical effect of the proceedings had in the present case has been to deprive the complainants of their property, namely, their right to charge a reasonable rate, and this result is continuing at the present time and the complainants are yet seeking a judicial hearing upon the question of the reasonableness of the rates involved. No argument can possibly change the result in the present case, and this result would follow in many cases under the Commission's view of the law, and have the effect of making the finding of the Commission conclusive as to the sufficiency of the rate involved. Any statute bringing about

such a result, either directly as in Chicago, etc., Ry. Co. vs. Minnesota, 134 U. S., 418, or indirectly, is unconstitutional and void.

In *Ex parte Young*, 209 U. S., 147 Mr. Justice PECKHAM, delivering the opinion, said:

> "If the law be such as to make the decision of the legislature or of a commission conclusive as to the sufficiency of the rates, this court has held such a law to be unconstitutional. *Chicago, etc., Railway Co. v. Minnesota*, 134 U. S., 418. A law which indirectly accomplishes a like result by imposing such conditions upon the right to appear for judicial relief as works an abandonment of the right rather than face the conditions upon which it is offered or may be obtained, is also unconstitutional. It may, therefore, be said that when the penalties for disobedience are by fines so enormous and imprisonment so severe as to intimidate the company and its officers from resorting to the courts to test the validity of the legislation, the result is the same as if the law in terms prohibited the company from seeking judicial construction of laws which deeply affect its rights."

Both of the cases cited clearly establish the principle that due process of law entitles a car-

rier to judicial examination and determination of the question of the reasonableness of the rates attempted to be established by any legislative body, or by any Commission, and that any law which directly or indirectly prevents such judicial hearing and judgment is in violation of the fifth amendment of the Constitution guaranteeing that no person shall be deprived of property without due process of law. Both of these cases arose under State statutes, but the exercise by Congress of the power conferred to regulate commerce between the states has repeatedly held to be subject to all the limitations contained in the Constitution.

Monongahela Nav. Co. vs. U. S., 148 U. S., 312.
U. S. vs. Joint Traffic Assn., 171 U. S., 550.
Fairbanks vs. U. S., 181 U. S., 283.
The Lottery case, 188 U. S.
Adair vs. U. S., 208 U. S., 161.

In the last of these cases (208 U. S., 180) Mr. Justice HARLAN says:

> "We need scarcely repeat what this court has more than once said that the power to regulate interstate commerce, while great and paramount, cannot be asserted in viola-

tion of any fundamental rights secured by other provisions of the national constitution."

The complainants, as common carriers, are entitled to make a reasonable charge for the services performed and the property used by them in the transportation of lumber from Willamette Valley points to San Francisco and interior California points. This right is property, and the complainants could only be deprived thereof by due process of law. With respect to such a right, nothing is due process except law in its regular course of administration through courts of justice under the forms and with the machinery provided by the wisdom of successive ages for the investigation judicially of the truth of a matter in controversy secured by laws operating upon all alike and not subjecting any individual to the arbitrary exercise of the powers of government unrestrained by established principles of private right of distributive justice.

Caldwell vs. Texas, 137 U. S., 697.

U. S. vs. Cruikshank, 92 U. S., 542, 554.

Leeper vs. Texas, 139 U. S., 462, 468.

C., M. & St. P. vs. Minnesota, 134 U. S., 418.

"In determining what is due process of law, regard must be had to substance, not to form."

C., B. & Q. vs. Chicago, 166 U. S., 234.

Congress cannot withdraw from judicial cognizance any matter which from its nature is the subject of a suit at law or in equity.

Murray's Lessee vs. Hoboken, 18 How., 284.

CONCLUSION.

The Circuit Court should be directed to overrule the demurrer and to enter a decree in favor of the complainants for the relief demanded in the bill of complaint.

The Commission would undoubtedly be entitled to permission to withdraw its demurrer and file an answer if it appeared that any possible issues of fact could be joined. But if as we believe the order of the Commission should be set aside either because the Commission exceeded

its jurisdiction or because of the unconstitutionality of the statute it is obvious that no issues of fact could be presented in behalf of the Commission which would be material to a determination of either of these questions or have any tendency to affect the decision of these questions which may be made upon the allegations of the amended bill.

Respectfully submitted,

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Office Supreme Court, U. S.
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JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1909.

No. 275.

SOUTHERN PACIFIC COMPANY AND OREGON AND CALIFORNIA RAILROAD COMPANY

vs.

INTERSTATE COMMERCE COMMISSION.

CERTIFICATE OF THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

NOTES OF ARGUMENT FOR THE COMPLAINANTS.

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Supreme Court of the United States,

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Statement.

The Willamette river flows north across Western Oregon and empties into the Columbia river at or near the city of Portland. It runs through large forests of fir and is navigable for one hundred miles from its mouth (Rec., p. 336). The

road of the complainants follows the valley of the Willamette throughout its entire length of about one hundred and fifty miles (Rec., p. 332).

Prior to 1899 the lumber along the Willamette had not been cut, largely because it could not compete in the San Francisco market with timber on the tidewater in and around Portland. and partly because of the quality of the lumber, the fir of the Willamette Valley not being as desirable as the pine in other parts of the State.

In that year the Oregon and California Railroad Company decided to foster the lumber industry along the line of its road and to make such a low rate to San Francisco that it would encourage the building of mills throughout the valley (Record, p. 333). There were two courses open to the railroad. Either to wait until the timber in the tidewater had been cut and the lumber in the Willamette Valley came to market in the natural order of things, and at a remunerative rate, or to develop the country and move the lumber at once by making a very low freight rate, to be increased to a fair rate for the service performed when the lumber industry had become firmly established. The latter policy was adopted, and,

after discussing the matter with lumbermen, a rate was made, in the year 1899, of $3.10 per ton from Portland and Willamette Valley points to San Francisco and San Francisco Bay points (Record, p. 333).

At the time this rate was made no lumber was sawed along the Willamette. At the present time, south of Portland, there are two hundred and fifty mills (Record, p. 118), and in one alone, in the year 1906, the cut was over eighty-two million (82,000,000) feet (Rec., p. 71), while the total cut of all the mills in one year is about six hundred million (600,000,000) feet (Record, p. 118). At the present time lumber is worth very nearly twice as much as it was in 1899 (Record, p. 341), while the cost of operating the road of the complainants has increased in about the same proportion. The $3.10 rate of 1899 was a very low lumber rate for an ordinary road (Record, p. 333), but exceedingly so for a road with the tremendous grades of the Oregon and California. The total rise between Portland and San Francisco going either way is over ten thousand (10,000) feet, and in crossing the Siskiyou Mountains there is a rise of over twenty-three hundred (2,300) feet in fifteen (15) miles (Record, p. 196). The grade is

such that helper engines have to be used on two hundred and three (203) miles of the road—sometimes one helper engine and in some places two helper engines in addition to the regular engine (Rec., p. 196). The road is also expensive to operate because of the many washouts due to the mountainous character of the country through which it runs.

This rate, therefore, which had been low in 1899, became in time under the changed conditions unreasonably low, and in January, 1904, the railroad raised the rate to $5 (Record, p. 12).

Upon the representation of lumber interests that they were in bad financial condition the railroad company lowered the rate upon green fir lumber and lath only to $3.10 per ton. This was done to help the lumbermen through their financial difficulties, and when lumber had gone up in value and the mills were prosperous the rate was restored in April, 1907, to $5, which is admittedly in and of itself a low rate for the service performed (Record, p. 331).

Thereupon and in November, 1907, a complaint was filed with the Interstate Commerce Commission by the Western Oregon Lumber Manufacturers' Association complaining of the

$5 rate from Willamette Valley points to San Francisco and praying for a reduction thereof (Record, p. 3), and upon the hearing of this complaint it was developed beyond any possibility of doubt that the $5 rate was in itself reasonable.

On this point counsel for the lumbermen said in answer to questions addressed to him by Commissioner Prouty (Rec., p. 57):

> "COMMISSIONER PROUTY: Let me ask you, Mr. Teal, this question. Suppose that rate had never been lower than 25 cents a hundred pounds, which is $5 a ton, would you claim that this Commission to-day ought to reduce that rate?
>
> "MR. TEAL: No; I don't think I would.
>
> COM. PROUTY: *That is to say, you do not claim the rate is unreasonable in itself?*
>
> "MR. TEAL: *No, I do not.*
>
> "COM. PROUTY: You put your case entirely on the ground that these people represented to your clients and to other mill men in the Willamette Valley that they would establish this lower rate for the purpose of building up the industry in that valley, that the industry cannot exist there in competition with other sections unless that rate is maintained in effect?
>
> "MR. TEAL: Yes, sir.

"COM. PROUTY: And therefore the railroad is obliged to maintain it in effect?

"MR. TEAL: It has been maintained for eight or nine years. You have my position exactly, Mr. Commissioner.

"COM. PROUTY: That simply shows that it has been maintained and industries have grown up; that the railroad company has during that period elected to maintain it and found it profitable, probably?

"MR. TEAL: You have stated my position exactly. *I am not here complaining about the rates being high or low, because it is a low rate.*"

Again, at page 62 of the Record the point is emphasized that the $5 rate is a low and reasonable rate when Commissioner Prouty says as follows:

"COM. PROUTY: That seems to be your case, Mr. Teal. If they can, there is no reason from your statement, why the rates should be reduced, *because you say the rate is low enough*, unless those men have been induced to build their mills there, and ought to be protected.

"MR. TEAL: That is correct. I want you to understand Mr. Commissioner that I do not claim the Commission has a right to

compel the railroad under ordinary circumstances to meet water rates or any other competition."

Notwithstanding that it was demonstrated by the lumbermen themselves that the $5 rate was reasonable and fair in itself with reference to the service performed, and notwithstanding that the Commission had more than once sustained a higher rate per ton per mile for a longer haul over easily operated roads, the Interstate Commerce Commission by an order dated June 1, 1908, required the railroad companies to desist from charging the $5 per ton rate on green fir lumber from Willamette Valley points to San Francisco and San Francisco Bay points and to put in force between such points a rate not exceeding $3.40 per ton, except from points on the west bank of the river north of Corvallis from which a maximum charge of $3.65 was permitted (Record, p. 27).

There is nothing in the opinion of the Commission which in any way indicates that it considered the $5 rate other than a low rate. It was agreed that the profits of the lumber business had been very large, Commissioner Prouty saying that "for the last ten years lumber opera-

tions upon the Pacific coast had been wonderfully profitable, and these extraordinary profits have led to an abnormal development of the business. What is true of the whole coast is true of the Willamette Valley, but in a somewhat less degree " (Rec., p. 21).

It was agreed that the roads were expensive to operate and at page 21 the Commission says : " all this lumber in reaching San Francisco must be hauled over the Siskiyou Mountains, where grades are extremely heavy and the cost of operation unusually high."

The decision was finally squarely placed upon the proposition that a low rate established by a railroad for the express purpose of encouraging and developing an infant industry could not be raised when the industry had become strong and established, as was the fact in the present case. The point of the decision is found in the following paragraph at page 25 of the record :

> " No argument and no citation of authority can, however, add to the naked statement of the fact. Take, for example, the case of Mr. Miles. This gentleman had es tablished a mill upon the strength of the $3.10 rate, which he was operating in the

year 1903. He had also made arrangements for the building of another mill and for the purchase of a large tract of timber. Hearing rumors that this rate was to be withdrawn, he suspended his operations. Subsequently, upon being assured by the officials of the Southern Pacific Company that it would continue its former policy, and relying upon the restoration of the rate itself, he resumed the construction of his mill and completed the purchase of his timber. Is it just and reasonable that within less than three years this company shall be allowed to again reverse its policy and to destroy the value of this man's property? We think not; the tremendous interests involved in the stability of railway rates must not be juggled with in this manner."

The circumstances which the Commission is supposed to have considered are that by the establishment of the extraordinarily low $3.10 rate an industry had grown in a few years' time from nothing to the enormous total of a cut of six hundred million (600,000,000) feet of lumber a year worth the fabulous sum of over ten million five hundred thousand dollars ($10,500,000), and that the price of lumber had doubled in value from 1899 to 1907, and that during the

same time the cost of operation to the railroad had greatly increased. This further fact was, we take it, also considered by the Commission, viz., that during this period the Willamette lumbermen had acquired an eastern outlet through Portland, which they did not have before, and that the larger part of their lumber went to eastern markets via Portland, making them independent to a great extent of the San Francisco market, which was their only market when the $3.10 rate was made in 1899. About 7,000 cars of lumber were shipped from the Willamette Valley in 1907 to eastern points via Portland. Less than 5,500 cars went south to California points and of this only 20 per cent. moved under the 3.10 rate. The total shipment of lumber from the Willamette Valley to all points was about 12,500 cars of which only about 1,000 were affected by this proceeding (Record, pp. 20 and 21).

That the decision of the Commission was based upon the novel proposition that it had the general powers of a court of equity was certainly the opinion of the dissenting members, who, speaking through Commissioner Harlan, said at page 27 of the Record:

"The $3.10 rate is conceded to have been a low rate, and I do not understand that the present rate of $5 is condemned in the opinion of the Commission as unreasonable in itself and apart from the matters of estoppel on which the opinion seems largely to rest. In my judgment, we are not warranted, under the act to regulate commerce as amended, in condemning a rate upon such considerations. When preference and discriminations are not alleged, the test of the lawfulness of a rate is whether as a rate for the service offered it is reasonable or excessive. This is not the test to which the rate complained of in this proceeding has been subjected as I read the opinion. It is not held to be unlawful on the ground that it is an excessive rate, but is reduced rather because of certain supposed equities existing between the complaining shippers and the defendant carriers. Without enlarging upon this view of the matter it will suffice to say that I do not understand that we are authorized to deal with a rate on those grounds."

After the filing of the order of the Commission of June 1, 1908, the Southern Pacific Company and the Oregon and California Railroad Company filed under the provisions of the Interstate Commerce Act a bill in equity in the Cir-

cuit Court of the United States for the Northern District of California to enjoin the Commission from enforcing said order and to set the same aside (Record, p. 2).

A certificate was then filed in said United States Circuit Court in August, 1908, by the Attorney-General of the United States under the provisions of the Act of Congress of February 11, 1903, commonly called the Expediting Act, asking that the case be given precedence over all other business and be assigned for hearing before not less than three of the Circuit Judges of the Ninth Circuit (Record, p. 29).

Afterwards and in September, 1908, the Interstate Commerce Commission filed its demurrer to the bill of complaint filed by the railroad companies alleging that the act of the Commission was final and conclusive and not reviewable by the courts (Record, p. 30).

Upon argument the demurrer was sustained and thereafter and in October, 1908, the complainants by leave of court filed an amended bill (Record, p. 32) to which the Commission again filed a demurrer similar to the demurrer interposed to the original bill of the complainants (Rec., p. 51).

Upon the argument of the demurrer to the amended bill the court was divided in opinion as to whether the demurrer should be sustained and as provided by statute certified the whole matter to this court.

The important question presented upon this certificate is whether the Interstate Commerce Commission can exercise the general powers of a court of equity in a matter of purely equitable jurisprudence without review by this or any other court. To put it in another way, is the Interstate Commerce Commission in passing upon the reasonableness of a rate limited in its jurisdiction to whether the rate is reasonable in reference to the service performed, as has always been heretofore supposed, or can it hold a rate unreasonable not at all with regard to the service performed, but because of a supposed estoppel arising out of the past relations between the carrier and shipper, which in no possible way affects the reasonableness of the rate with reference to the value of the transportation furnished.

FIRST POINT.

The Interstate Commerce Commission was without power to order the railroads to desist from charging a $5 per ton rate on green fir lumber from Willamette Valley points to San Francisco and to put in force between such points a rate not exceeding $3.40 per ton.

Any power in the Commission to act upon the complaint of the Western Oregon Lumber Manufacturers' Association is derived from Section 15 of the Interstate Commerce Act and the only portion of that section of any consequence in this discussion is that which provides that when the Commission

> " shall be of the opinion that any of the rates, or charges whatsoever, demanded, charged or collected by any common carrier or carriers, subject to the provisions of this Act, for the transportation of persons or property . . . are unjust or unreasonable, or unjustly discriminatory, or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this Act, to determine and prescribe

what will be the just and reasonable rate or rates, charge or charges, to be thereafter observed in such case as the maximum to be charged."

From reading the above it is plain that as a condition precedent to the order entered by the Commission there must have been some finding that the rate before it for consideration was "unjust or unreasonable, or unjustly discriminatory or unduly preferential or prejudicial or otherwise in violation" of the Act, and the whole question comes to this—was there such a finding in this case within the meaning of the words "unjust or unreasonable" as used by Congress, for we may eliminate entirely from our consideration the other words found in the section, as there is no contention that the rate of $5 per ton was "unjustly discriminatory or unduly preferential or prejudicial," or that it in any way violated the act otherwise than that it was "unjust or unreasonable."

Our first interest is to ascertain just what Congress intended by the phrase "unjust or unreasonable." Are these words to be construed in their broadest possible sense or are they qualified by the general purpose of the Act in which

they are found? Are they used as signifying unfair and not right from whatever cause, or do they mean simply that the rate charged must bear a just and reasonable relation to the service performed. Railroads sell transportation just as a merchant sells dry goods, and heretofore it has been supposed that Congress gave power to the Commission to act only when the transportation sold was not commensurate with the rate charged. That is to say, the rate must bear a just and fair and reasonable relation to the transportation furnished—to the service performed. If under some form of paternal government a statute were to enact that a merchant should not charge for his dry goods more than a just and reasonable rate it would require a strong imagination to suppose that this meant more than that the goods should be worth what was asked for them and it never would occur to anybody that it could mean that the merchant could not increase his price because a man had moved into town attracted by the low price of groceries, if, on the increased price, he sold full value for the price charged.

It would seem as if Section 15 of the Commerce Act should be given a plain and sensible

construction and it is inconceivable that Congress intended to vest the full powers of a court of equity in an administrative body with no review of its decision without so declaring in unmistakable words. The Interstate Commerce Act will be searched in vain for any clause indicating that it was the intention of Congress to give to the Commission such extraordinary powers, greater even than any to be found in a circuit court of the United States; for there is a right of appeal from the decrees of a circuit court. It would be strange indeed if Congress intended to depart from the long established principles of jurisprudence and place questions of estoppel by conduct and other strictly equitable questions in the hands of an administrative body without opportunity for review, and it would be stranger still if Congress should do this without one definite word to that effect or anything in the Commerce Act from which such intention could be gathered.

The whole case hinges on this alone;—What do the words "unjust and unreasonable" mean? Are we to impute the vesting by Congress of such extraordinary power

in an administrative body like the Commission by construing the words in their broadest dictionary sense or are we to assume that Congress never intended to make the Commission a higher judicial body even than a court of equity and give to the words the meaning always heretofore attributed to them, viz: that a rate charged for the transportation of freight must be just and reasonable with regard only to the service performed.

The wording of the first section of the Act would seem to settle the meaning of the words used in Section 15 and to dispose entirely of the notion that they were used in anything but a limited sense. The clause of Section one of the Act is as follows:

> "All charges made for *any service rendered or to be rendered* in the transportation of passengers or property . . . shall be just and reasonable; and every unjust and unreasonable charge *for such service* . . . is prohibited and declared to be unlawful."

We, therefore, submit that the words "unjust and unreasonable" must be considered with reference to the purpose and intention of the Interstate Commerce Act, which simply was to

place in the hands of an administrative body a supervision of rates so as to prevent discrimination in favor of one shipper against another and the charging of a rate unless full value was returned therefor in the transportation furnished. The duty of the Commission as declared by the act is to see that there is equality among shippers and that no rate is made which is unjust and unreasonable when considered with reference to what is done by the railroad in return for the money paid it by the shipper, and outside of this the Commission has no interest or duty with regard to rates.

An examination of the circumstances of the case at bar will show that there is no claim made that the $5 per ton rate is "unjust and unreasonable" in the sense that too much was asked for the transportation sold. The facts are that in 1899 the railroad penetrated a forest along the Willamette which it did not pay to lumber, because any fair rate which the railroad should charge, would make competition with timber of better quality upon tidewater points impossible. There were practically no mills in the valley. A broad and generous policy was

adopted by the railroad which made the lumbermen rich. A low rate was installed, which was unremunerative to the railroad, for the sole purpose of developing the lumber interests and permitting them to become established on a firm basis and able to compete with tidewater forests. The rate made was most extraordinarily low, when the mountainous character of the road was considered; the lowest or one of the lowest ever made in the United States (Record, p. 57). It was made with the express purpose of raising it to a fair rate when the lumber interests were established and fully able to pay a proper charge for the service rendered (Record, p. 331). It would have been idle for the railroads to install this low rate for all time to come. This is practically conceded, for the Commission says in its opinion: "We conclude that these defendants ought to maintain, *for the immediate future at least*, substantially the same rate which they have maintained in the past" (Rec., p. 25). Now who is to determine the time when the change of rate should be made? Are the shippers to decide this or is it for the railroad? If the shippers are to say, then of course the railroad will always have to carry at the unremunerative

rate and there never will be any change. As we understand it railroading is still to be regarded as a business to be carried on by the officers of the railroad upon common business principles and subject only to an intelligent regulation by the Commission to compel equality in the treatment of shippers and a proper reasonable charge for the work done. Now if the operation of a railroad is still an independent business, it would seem that the time for the change of an unusually low rate (unjust and unreasonable to the railroad considering the service rendered, and made solely to establish a new industry) to a fair and just rate for all concerned was for the railroad to determine and the only possible concern as we look at it which the shippers and the Commission could have in this change is whether the new rate is fair and just in itself.

As was said by Mr. Justice BREWER in Interstate Commerce Commission vs. Chicago & Great Western, 209 U. S., 118:

> "It must be remembered that railroads are the private property of their owners; that while, from the public character of the work in which they are engaged the public

has the power to prescribe rules for securing faithful and efficient service and equality between shippers and communities, yet *in no proper sense is the public a general manager.*"

Now the result of the broad-minded policy of the railroad was beyond anything which had been believed possible. Two hundred and fifty mills sprang up along the Willamette (Record, p. 118). One of these mills alone cut eighty-two million (82,000,000) feet a year (Record, p. 71). All of them cut about six hundred million (600,000,000) feet a year (Record, p. 118). There are five kinds of rough green lumber referred to and their prices given for 1907 in the record, viz.: ties, timbers, strings, round frames and round sills (Rec., p. 341) and their average price for the year 1907 is $17.50 a thousand. This would make the yearly cut in the Willamette valley worth ten million five hundred thousand dollars ($10,500,000) gross a year to the lumbermen. From nothing in 1899 to a business of ten million five hundred thousand dollars ($10,500,000) gross in 1907. During the same period lumber had about doubled in value. Ought not such an enormous industry to pay a fair and

just rate for the transportation of its products to market? Isn't now as good a time as any other to change the rate to a reasonable charge for the service performed? Must the railroads wait another eight years until the business of the lumbermen has reached twenty million dollars ($20,000,000) a year? Would not the lumbermen object then just as much as now? And if their objections have any force now, would they not have as much force then?

There are some other important changes which took place during the time from 1899 to 1907, which would seem to make the year 1907 as good a year to establish a reasonable rate for carrying the product of the Willamette mills to market as any other. Not only has the price of lumber doubled, but the cost of the operation of the railroad has increased in the same ratio and now the mill owners have an outlet to the east via Portland through which the largest percentage of their product is shipped, while in 1899 their only market was to the south at San Francisco and vicinity. Their business, therefore, in no way depends upon San Francisco and the rate charged to that point (Record, pp. 20 and 21).

That the rate of $5 per ton is reasonable in itself is admitted in the record by counsel for the lumbermen who said at page 57 :

> "COM. PROUTY: *That is to say, you do not claim the rate is unreasonable in itself?*
>
> "MR. TEAL: *No, I do not.*
>
> . . . . . .
>
> "MR. TEAL: You have stated my position exactly. *I am not here complaining about the rates being high or low, because it is a low rate.*"

There is nothing in the opinion of the Commission with reference to the rate of $5 per ton being too high and in the dissenting opinion of Commissioner Harlan he says at page 27 of the Record :

> "The $3.10 rate is conceded to have been a low rate, and I do not understand that the present rate of $5 is *condemned in the opinion of the Commission as unreasonable in itself.*"

The Commission itself apparently considered that it was sitting as a court of equity. At least the reasons given for its decision give that impression. At page 25 of the Record it says :

> " We apply our decision entirely to the facts in the case before us. Considering all the circumstances, having in mind the just interests of all parties, we conclude that these defendants ought to maintain, for the immediate future at least, substantially the same rate which they have maintained in the past."

What the Commission has in fact done is to determine which business shall have the preference, and it has decided as between the lumber interests and the railroad in favor of the former, although it is conceded by the Commission that the lumber business is enormously profitable and that the value of its product has doubled since the $3.10 rate first went into effect in 1899 and it is admitted that the railroad of the complainant is expensive to operate, that cost of operation on all roads has increased since 1899 and that the rate of $5 per ton is a just and reasonable rate. Is it to be believed that Congress ever intended to place in any administrative body or in any body even if it combined administrative, executive and judicial powers, such extraordinary power as to decide as between two business enterprises, which should make a profit

and which should not. The very thought of such power being vested in any man or body of men is foreign to American ideas. If this can be done, then why cannot one business be entirely ruined and yet the parties interested have no redress, if the action of the Commission is not to be reviewed? It is hardly conceivable that we should be seriously arguing the question whether the Commission was authorized to exercise its judgment as to whether the stockholders of a lumber company should have their profits increased at the expense of the stockholders of a railroad. If it was so authorized, then it is open to every business enterprise to attempt to increase its profits at the expense of a railroad.

Suppose that the situation was reversed and that there had been lumber mills and no railroad in the Willamette Valley and that the lumbermen had induced the railroad company to build in the Valley upon the understanding that the railroad should charge a certain rate, and that when the railroad had been built it was evident that the rate was too high, would anybody claim an estoppel in favor of the railroad? Is there any real difference between the present case and the illustration given? Certainly none is appar-

ent, and it merely goes to show that any departure from the plain principle that the rate must be just and reasonable with reference only to the service performed opens the door to controversies that were never intended by Congress to be submitted to the Commission, but are only for the consideration of courts of equity.

In the course of the opinion the Commission says at page 23 of the Record:

> "It is not claimed that the defendants were under contract with any one shipper, nor with the general body of shippers in that region to maintain the $3.10 rate. *It is doubtful if such a contract would be valid* * * *."

With this conclusion we agree, and it was so decided by this Court in *Armour Packing Co. v. United States*, 209 U. S., 56, but what we do not understand is how this case can be in a stronger position than if there had been a contract between carrier and shippers. What is an estoppel? It is an arrangement between parties enforced by a court of equity because of the conduct of the parties. It might perhaps be called a contract or arrangement resulting from conduct. Now if an out and out

contract not to do so between shippers and carrier would not prevent the latter from raising a rate, then how is it possible that an estoppel can accomplish this? Further, still, who are the parties to this estoppel? Estoppels are mutual. Certainly a lumberman who opened up a mill in 1906 has no claim of estoppel against the railroad. The country was then developed. The railroad surely owes no obligation to him. On the principle of the decision of the Commission the rate can properly be raised as to him, for it is a reasonable rate in itself. If, however, the rate is increased as to him, then would be raised the hue and cry of discrimination against him in favor of the other lumbermen. We think the foregoing illustrations fully point out the error of trying to decide cases of rates under general principles of equity and not under the principle declared in the Act that charges must be just and reasonable with reference to the work done and the service rendered.

It is plain that the $5 per ton rate is a fair rate in itself and has been ordered reduced simply upon the theory that a carrier cannot raise its rates after shippers have been persuaded to invest capital on the strength thereof.

Assuming for a moment that the Commission had the power to place its decision on that ground, yet it is difficult to perceive how any such conclusion could be warranted upon the facts in this case, except on the theory, which has been expressly disowned by the Commission, that a rate once established can never be raised by a carrier no matter what the changed conditions may be. As to this the Commission say at page 25 of the Record:

> "We do not hold, as a general proposition, that a railroad company having established and maintained a rate is conclusively estopped from advancing that rate, nor that where a rate is put in for a special purpose it may not be taken out when that purpose has been subserved and new conditions have grown up."

If this theory is abandoned (as it has been) then it is hard to see how there could be any more remarkable change of conditions than is shown in this case between 1899, when the $3.10 rate was made, and 1907, when it was raised to $5 per ton, or how there ever could be any combination of conditions which would warrant an increase of a rate, if not found in the present controversy.

In 1899 no lumber mills in the Willamette Valley. In 1907 two hundred and fifty (250) mills cutting six hundred million (600,000,000) feet a year worth in gross over ten million dollars ($10,000,000). In 1907 lumber was worth nearly twice what it was in 1899. From 1899 to 1907 the cost of operation of a railroad had increased enormously. Now what should be added to the facts which we have given, in order to warrant an increase of rate. The Commission suggests nothing, and certainly nothing readily occurs to the ordinary mind. We have a rate unusually low and utterly unfair to the railroad if always to be maintained. The only excuse for its existence was to establish a new industry and then when the mills were on their feet and strong financially to make a rate fair to all concerned, the railroad as well as the shipper (Record, p. 331). Fostered by this low rate the industry grew almost beyond comprehension. By reason of general conditions the product of the mills doubled in value and the expenses of the railroads increased. We find, therefore, the essential facts to warrant an increase of the low rate made under the peculiar conditions of this case, viz., extraordinary prosperity of shippers and

added cost of the service performed by the carrier. We therefore say that even if the Commission was authorized to hold a rate unjust because of certain supposed equities between shipper and carrier, yet such an exercise of that power on the facts before us was error.

We, however, respectfully submit that the Commission was without power to make the order of June 1, 1908, and that the error of assuming that it had such power arose from giving a wrong meaning to the words "unjust and unreasonable," found in the 15th section of the Interstate Commerce Act, and from not construing these words with reference to the context, thereby taking to itself the general functions of a court of equity and condemning the rate, not because it was excessive but upon the ground that the carriers were estopped from raising the original rate for the reason that shippers had made investments on the strength of it, and we urge with confidence that Commissioners Knapp and Harlan were right in saying:

> "In my judgment we are not warranted, under the act to regulate commerce as amended, in condemning a rate upon such considerations. When preference and discriminations are not alleged, the test of the

lawfulness of a rate is whether as a rate for the service offered it is reasonable or excessive" (Record, p. 27).

SECOND POINT.

If the position taken by the Interstate Commerce Commission in its demurrer is correct, that its act in making the order of June 1, 1908, was final and conclusive and not reviewable by the courts, then the Interstate Commerce Act is unconstitutional.

A.

Apart from the statute a railroad has the right to make a just and reasonable charge for every service performed by it for a shipper, just as much as any person engaged in any other business has a right to charge for his services. This right, which it has always had, is directly given to it by the first section of the Interstate Commerce Act which provides as follows :

> " All charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, shall be just and reasonable; and every unjust and un-

reasonable charge for such service or any part thereof is prohibited and declared to be unlawful."

Now the Commission insists that if it makes an erroneous decision on the facts presented to it and compels the railroad to adopt an unreasonable rate, thereby depriving it of its property without due process of law, such decision cannot be reviewed by any court. It is claimed that a wrong conclusion on the facts, if not arbitrary, must stand, and that neither this nor any other court has power to review it.

The mere statement of this extraordinary position would seem to be enough to dispose of it. The powers of the Interstate Commerce Commission must be exercised subject to the provisions of the Constitution. By the 5th Amendment no person can be deprived of his property without due process of law. For an administrative body to compel a railroad to charge an unreasonably low rate for its services, without an opportunity to review such decision in the courts is a taking of the railroad's property without due process of law. No citation of authority is needed to support this statement.

The Commission is therefore in this curious dilemma—either the courts have a right to re-

view the decision of the Commission compelling a railroad to establish a particular rate or the Interstate Commerce Act is unconstitutional.

In the case at bar it is shown beyond any doubt that the $5 per ton rate established in 1907 is reasonable in itself. It therefore follows that a $3.40 per ton rate is unreasonable. We have then an imposition by the Commission of a concededly unjust rate as a result of the misunderstanding by the Commission of either the law or the facts. Is the railroad without redress? Can the Commission take away from the railroad the right given the latter by the Act of Congress to charge a reasonable rate for a service rendered? Is the Commission greater than the Act which created it?

Before this court will hold the Act unconstitutional, we venture to say that an order of the Commission which it is claimed enforces the establishment of an unreasonable rate will be reviewed by the courts.

B.

If the act of the Commission in establishing a $3.40 per ton rate in place of the $5 per ton rate is to be deemed a legislative act and therefore one not to be reviewed by the courts, then the

Interstate Commerce Act is clearly unconstitutional, for no one has ever claimed that such a power could be delegated.

The Act expressly declares that the railroad can charge just and reasonable rates. Surely after such a provision it would be difficult to maintain that Congress had delegated to a Commission power to make an unreasonable rate, even if not made arbitrarily.

It has never yet been held that legislative powers could be delegated. The most that has ever been decided is that Congress could give an executive officer or administrative body the power to apply a standard created by it. There is no standard given by the fifteenth section of the Interstate Commerce Act, but we do not discuss that question here. Congress cannot under the Constitution take from the railroad its property without due process of law, and it certainly cannot delegate such power to an administrative body. Congress surely cannot do through the Interstate Commerce Commission what it could not do itself.

We therefore submit that the demurrer should have been overruled by the court below and the railroads permitted to review in the courts the order of the commission of June 1, 1908.

THIRD POINT.

This case is properly before the court on the certificate of the judges of the United States Circuit Court for the Northern District of California.

By the twelfth paragraph of Section 16 of the Interstate Commerce Act it is enacted that the provisions of the so-called Expediting Act approved February 11, 1903, shall be applicable to suits brought in the Circuit Court of the United States against the Commission to enjoin, set aside, annul, or suspend any of its orders.

The first section of the so-called Expediting Act provides that when the judges, sitting in a case in which the Attorney-General has filed a certificate that it is one of general public importance, are divided in opinion, the case shall be certified to this court for review.

The case now before the court is a suit originally brought against the Commission to enjoin and set aside its order of June 1, 1908, and therefore one to which the provisions of the Expediting Act are made applicable by the 16th section of the Commerce Act. In this case the Attorney-General of the United States filed a certificate

that it was one of general public importance. The three judges before whom it was heard below were divided in opinion and thereupon certified the case to this court as required by statute.

While the so-called Expediting Act and the procedure thereunder originally applied only to suits wherein the United States was complainant, by the 16th section of the Interstate Commerce Act the procedure of the Expediting Act was extended to a suit brought against the Commission by a railroad to enjoin its order. Otherwise the provisions of the 16th section of the Commerce Act referred to would mean nothing.

FOURTH POINT.

The demurrer of the Interstate Commerce Commission should be overruled.

MAXWELL EVARTS,
Counsel for Complainants.

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8014—09——1

In the Supreme Court of the United States.

OCTOBER TERM, 1909.

SOUTHERN PACIFIC COMPANY AND OREGON AND CALIFORNIA RAILROAD COMPANY.
v.
INTERSTATE COMMERCE COMMISSION.
No. 275.

ON CERTIFICATE OF THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

BRIEF FOR THE INTERSTATE COMMERCE COMMISSION.

STATEMENT.

This case comes here upon the certificate of the three judges of the Circuit Court for the Northern District of California without decision in accordance with their interpretation of section 1 of the expediting act of February 11, 1903 (32 Stat., 823).

The suit was brought by the railroad companies in the circuit court to restrain the enforcement of an order of the Interstate Commerce Commission which established a maximum rate for the transportation of rough green fir lumber from points in the Willamette Valley, Oregon, to San Francisco. The case came on for argument before the three circuit judges upon the demurrer of the commission to the amended bill of complaint, to which was attached the opinion and

order of the commission in the proceedings fixing the rate and also the evidence before the commission. The circuit judges have certified the whole case, and it comes here without opinion, decision, or assignment of errors.

Act of the Commission.

The commission issued its order in June, 1908, after a full hearing upon a complaint filed by the Western Oregon Lumber Manufacturers' Association et al. against the Southern Pacific Company, and Oregon and California Railroad Company, which, in April, 1907, had advanced the rate on rough green fir lumber and lath from points in the Willamette Valley to San Francisco, from $3.10 to $5 per ton. The report and order of the commission appear in the record, pages 15 to 28, and the evidence and exhibits before the commission in the record, pages 53 to 343.

It appears that before 1898 no lumber had been cut in the Willamette Valley except for local consumption, and a rate was then put into effect which was intended to develop the industry. Mr. Commissioner Prouty says in his report (Rec., p. 16):

> The ocean could only be reached at Portland upon the north after a rail haul of considerable length and upon a comparatively high rate, so that lumber cut in the Willamette Valley could not find a market by water in competition with that produced in Portland. The rate to the south was so high as to prohibit shipments in that direction in competi-

> tion with water carriage from Portland. About 1898 the Southern Pacific Company became convinced that it ought to adopt a policy which would develop the lumber industry along its lines in the Willamette Valley. * * * In order therefore to give this lumber of the Willamette Valley a market it was absolutely essential to establish a rate from that territory to San Francisco, which was fairly equivalent to the water rate from Portland and from corresponding points. This was perfectly understood by all parties, and the determination by the Southern Pacific was to do precisely this thing.

Accordingly the railroads in 1899 established a rate of $3.10 per ton upon fir lumber, both green and dry, to San Francisco and bay points. Under the stimulus of this rate much capital was invested and the lumber business in the Willamette Valley rapidly developed. In 1903 the railroad raised the rate to $5. The effect of this advance the commission describes as follows (Rec., p. 18):

> In the latter part of 1903 the $3.10 rate was withdrawn from Portland, and in January, 1904, it was withdrawn from the entire Willamette Valley, a rate of $5 being established instead. The testimony in this case shows that the effect of the putting in of the $5 rate was, or would have been if continued, to practically suspend the operations of these mills. They made this representation with great earnestness to the Southern Pacific Company, and finally the leading officials of that company, among others its chief traffic director, visited

> the scene of these operations. As a result of this personal inspection and after further consideration that company announced that while the rate never ought to have been made at the outset, inasmuch as it had been that company would continue it for the future, but would limit it to rough lumber shipped green. Acting upon this announcement the Southern Pacific Company did, in May, 1904, make effective once again this rate of $3.10, which was now, however, applied not to all lumber, but only to rough green fir and lath.

The rate which was restored only on rough green fir lumber and lath remained $3.10 until the advance to $5 in 1907, which occasioned the complaint to the commission.

As to the effect of the low rate in building up the industry, the commission says (Rec. p. 18):

> There can be no question but what the existence of this industry in anything like its present proportions in the Willamette Valley is almost entirely due to the establishment of this $3.10 rate. Without it the mills would not have been built nor the timber which these operators own purchased, nor could the business have been profitably conducted during recent years upon the present rate of $5 per ton. The complainants insist that a maintenance of the present rate will shut up their mills and very largely depreciate their timber investments.

The advance of $1.90 per ton was equivalent to $3.13½ per thousand feet which was considerably

more than the average profit to the manufacturer, which had ranged from $1.50 to $2.50 per thousand. Of the probable effect of the railroad's advance the commission says (Rec., p. 19):

> The rate from the Willamette Valley is now increased by more than the profit in the manufacture of this lumber. There can be but one result—lumber reaching San Francisco by water must supplant that from the Willamette Valley in the San Francisco market. * * * To deprive them of this market or to require them to take $3.13 per thousand feet less for this part of their product, which is a considerable percentage of the whole, would turn a profitable into an unprofitable business.

The commission found that while $3.10 was a low rate for lumber it had more than paid the cost of operation and had contributed largely to the prosperity of the railroads by building up the community. The commission further says (Rec., p. 22):

> The $3.10 rate was certainly a low one, but we are satisfied that it did yield when established, has ever since yielded, and would for the future yield a substantial return over and above the cost of operation, and that its maintenance in the past has contributed much to the prosperity of the defendants.

And on page 24:

> The expense of handling traffic under this rate is not greater than the revenue, thereby occasioning a loss which must be made up on other business. Such a rate would present an

> entirely different question from that before us. Here the business is remunerative directly, besides being highly beneficial to the defendants indirectly.

But the commission determined that a rate should be established higher than the old rate, for the reason that the water rate from Portland to San Francisco had advanced.

Therefore the commission ordered that the railroads for a period of not less than two years should apply to the transportation of rough, green fir lumber and lath, in carloads, a rate not exceeding $3.40 per ton from points upon the east bank of the Willamette River and upon the west bank south of Corvallis to San Francisco, Cal., and bay points; and a rate not exceeding $3.65 per ton from points upon the west bank of the river north of Corvallis, not including the city of Portland in either rate.

The railroads then filed a complaint in the United States Circuit Court for the Northern District of California to restrain the enforcement of the order of the commission. The Attorney-General filed a certificate and the case was heard before the three circuit judges, who unanimously sustained the demurrer of the commission. Thereupon an amended bill of complaint was filed (Rec., pp. 32–50); the three judges, being divided in opinion as to whether the demurrer to the amended bill should be sustained, have certified the case to this court without decision.

For the convenience of the court and counsel we have printed as an appendix to this brief the full text

of the Interstate Commerce Act of February 4, 1887, and amendments, as in effect prior to June 29, 1906, together with the Hepburn Act of June 29, 1906, set in parallel columns. This appendix will indicate exactly the changes effected in the interstate commerce act by the new law.

Contentions of the railroads.

The objections urged against the order of the commission are directed against (1) the constitutionality of the Hepburn Act and (2) the manner of the exercise by the commission in the case under consideration of the power conferred upon it by that act.

Succinctly stated, the objections to the constitutionality of the act are as follows:

1. That the Hepburn Act is unconstitutional in that it confers upon the commission executive, legislative, and judicial powers, and therefore violates article 1, section 1, article 2, section 1, and article 3, section 1 of the Constitution.

2. That the complainants are entitled under the Constitution to a judicial investigation in a court by due process of law of the truth of the matter in controversy, to wit, the reasonableness of the rate.

3. That the attempt by the commission to annul the $5 rate and establish other rates was the taking of the property of the complainants without due process of law in violation of the fifth amendment.

4. That section 16 is unconstitutional in providing that complainants shall forfeit $5,000 to the United

States for each day that they failed to obey the order of the commission notwithstanding that the question of reasonableness has not been judicially investigated by due process of law in any court of justice; it therefore subjects complainants to penalties and forfeitures without due process of law.

The following objections of the complainants are directed against the manner in which the commission exercised its power and against the result reached by it:

1. That the commission did not find the rate of $5 per ton to be unreasonable, but reasonable in and of itself; that the commission's only power is to fix a rate as a maximum which shall be just and reasonable for a particular service rendered, and in reducing the rate to an amount less than this the commission mistook the law and misinterpreted its powers.

2. That the decision of the commission was based upon a misconception and mistake of the law in that the commission in determining what was a reasonable rate under the circumstances took into account the fact that the lumber industry had been developed in the Willamette Valley on the faith of the rates established by the railroads.

3. That no power exists in the commission and no duty rests upon carriers to make rates so low that shipments may find a market, and no duty rests upon carriers to make rates so low that products carried by them shall find a market in the same place where they come into competition with prod-

ucts carried by water, but the option is left with the carrier to meet water competition.

4. That the rates established by the commission will be unremunerative; that the rate of $5 per ton is just and reasonable.

The complainants filed with the complaint a stenographic report of the testimony and exhibits before the commission (Rec., pp. 55–330) and two affidavits (Rec., pp. 331–338).

Grounds of demurrer.

The Interstate Commerce Commission filed a special demurrer to the amended bill of complaint setting out the following grounds (Rec., pp. 51–52):

1. That it appears from the face of the bill that all the proceedings required by the statute to be taken were duly taken and had and that the conclusion of the commission was not arbitrary, or reached through fraud. Therefore, the act of the commission is final and conclusive and not reviewable by the courts.

2. That the bill of complaint does not set forth any fact showing fraud or arbitrary or irregular action on the part of the commission.

3. That it does not appear from the bill how or wherein the rates of $3.10, $3.40, or $3.65 are unreasonable rates; nor how or wherein $5 is a reasonable rate.

4. That the bill does not state any facts from which the court can determine upon the face of the bill that

the rates complained of are unreasonably low or confiscatory. The bill does not set out the cost of transportation of lumber, or other merchandise, or the gross receipts of complainants or the gross expenses, or the net profits or loss, as the case may be, or the cost of the carriage of a ton of lumber in carload lots from points in the Willamette Valley to San Francisco, or any other fact or circumstance which, if true, would show that the rates fixed by the commission were unreasonably low or confiscatory.

5. That the bill does not state in facts well pleaded that the rates complained of are confiscatory, or would produce a loss to the complainants, but simply states that the rates complained of are unreasonably low and unremunerative, without stating the amount of profit, if any, said rates would produce, or what percentage of profit complainants consider to be a remunerative profit, and without stating in what degree, if any, or in what manner the rates fixed by the commission are below the cost of the service.

6. That the bill is indefinite, vague, uncertain, and ambiguous in that it states merely the conclusion of the pleader and does not allege any definite ultimate facts from which the court can determine whether the rates fixed by the commission in its order complained of are unremunerative or less than the cost of the service performed.

7. That complainants have an adequate remedy at law.

ARGUMENT.

I.

The certificate should be dismissed because this court is without jurisdiction at this stage to pass upon the merits, the case having been improperly brought before it.

This case was heard below by three judges of the Circuit Court under the authority of the so-called "expediting act" (32 Stat., 823). The judges were not unanimous in opinion and have sent the case here by certificate, in accordance with their construction of section 1 of said expediting act, which provides that "in the event the judges sitting in such case shall be *divided in opinion*, the case shall be certified to the Supreme Court for review, in like manner as if taken there by appeal."

The expediting act of February 11, 1903 (32 Stat., 823), provides:

> (1) That in any suit in equity pending or hereafter brought in any circuit court of the United States under the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety, "An Act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, or any other Acts having a like purpose that hereafter may be enacted, wherein the United States is complainant, the Attorney-General may file with the clerk of such court a certificate that, in his opinion, the case is of general public importance, a copy of which shall be

immediately furnished by such clerk to each of the circuit judges of the circuit in which the case is pending. Thereupon such case shall be given precedence over others and in every way expedited, and be assigned for hearing at the earliest practicable day, *before not less than three of the circuit judges of said circuit, if there be three or more; and if there be not more than two circuit judges, then before them and such district judge as they may select. In the event the judges sitting in such case shall be divided in opinion, the case shall be certified to the Supreme Court for review in like manner as if taken there by appeal as hereinafter provided.*

SEC. 2. That in every suit in equity pending or hereafter brought in any circuit court of the United States under any of said Acts, wherein the United States is complainant, including cases submitted but not yet decided, *an appeal from the final decree of the circuit court will lie only to the Supreme Court* and must be taken within sixty days from the entry thereof: *Provided,* That in any case where an appeal may have been taken from the final decree of a circuit court to the circuit court of appeals before this Act takes effect, the case shall proceed to a final decree therein, and an appeal may be taken from such decree to the Supreme Court in the manner now provided by law.

The Hepburn act, amending the Interstate Commerce law (June 29, 1906, 34 Stat. 584, 592), provides:

SEC. 16. The venue of suits brought in any of the circuit courts of the United States

against the Commission to enjoin, set aside, annul, or suspend any order or requirement of the Commission shall be in the district where the carrier against whom such order or requirement may have been made has its principal operating office, and may be brought at any time after such order is promulgated. * * *

* * * * *

The provisions of "An Act to expedite the hearing and determination of suits in equity, and so forth," approved February eleventh, nineteen hundred and three, shall be, and are hereby, made applicable to all such suits, including the hearing on an application for a preliminary injunction, and are also made applicable to any proceeding in equity to enforce any order or requirement of the Commission, or any of the provisions of the act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, and all acts amendatory thereof or supplemental thereto. It shall be the duty of the Attorney-General in every such case to file the certificate provided for in said expediting Act of February eleventh, nineteen hundred and three, as necessary to the application of the provisions thereof, and upon appeal as therein authorized to the Supreme Court of the United States, the case shall have in such court priority in hearing and determination over all other causes except criminal causes. * * * An appeal may be taken from any interlocutory order or decree granting or continuing an injunction in any suit, but shall lie only to the Supreme Court

> of the United States: *Provided further*, That the appeal must be taken within thirty days from the entry of such order or decree, and it shall take precedence in the appellate court over all other causes, except causes of like character and criminal causes. (34 Stat., 584, 592.)

In this case the Attorney-General duly filed the certificate provided for in the above act. The case was heard by the three circuit judges for the Ninth Judicial Circuit upon the amended bill and demurrer, and the three judges claiming to be divided in opinion certified the case to this court. As judgment could have been rendered by a majority of the court, a final decree should have been entered in accordance with the opinion of such majority and the case should then have come to this court by appeal. Instead, the whole case, without opinion or decree, has been transferred to this court by certificate for review.

It is submitted by the Government that the so-called "Expediting Act" properly construed contemplates the certification to this court of the classes of cases mentioned only when the judges sitting in the circuit court are "equally" divided in opinion and consequently are unable to enter an affirmative decree and not when there is a division of two to one or any other unequal division, in which case it is possible to enter a decree in the lower court and to bring the record up with an assignment of errors.

(a) CONSENT OR AGREEMENT CAN NOT CONFER JURISDICTION UPON THIS COURT.

As a unanimous judgment was wanting in this case below, the Circuit Court held that it should be certified to this court for review. Upon the request of counsel who represented the commission in the court below and who now participates as a special assistant for the Government in this case, the further statement is made that such counsel was and is of the opinion that the words "divided in opinion," as used in the expediting act, mean any division.

The Attorney-General, however, believes that a construction of the expediting act which transfers to this court for decision in the first instance a case in which the lower court had power to enter a decree, is inconsistent with the distinctive functions of the appeal and the certificate; and feels, therefore, that his duty to this court requires him to urge that the certificate be dismissed and the case remanded to the Circuit Court with instructions to enter a decree in accordance with the opinion of the majority of said court.

Even if all counsel on both sides below had consented to the jurisdiction of this court, consent alone can not avail to confer jurisdiction. The original jurisdiction of this court rests upon the Constitution; its appellate jurisdiction rests upon the Constitution and the acts of Congress. It must be exercised in accordance therewith and the court can not assume, nor can counsel by consent confer upon it, jurisdiction in any other mode than that prescribed. Though counsel

remain silent, the question of the court's jurisdiction is so fundamental that it will *sua sponte* determine in all cases whether it has jurisdiction before proceeding to pass upon the merits.

This court has repeatedly announced the foregoing proposition. In the case of *The Lucy* (8 Wall., 307), the District Court for the Southern District of California allowed an appeal to this court, although, as the law then stood, the case should have gone to the Circuit Court for that district. The record had been filed in the Circuit Court, but by agreement of counsel had been transferred to this court. Opposing counsel contended that good faith required the Government to keep its agreement. This court, through Mr. Chief Justice Chase, in dismissing the case, said (p. 309):

> This objection to the jurisdiction is decisive. * * * No consent of counsel can give jurisdiction. Appellate jurisdiction depends upon the Constitution and acts of Congress. When these do not confer it, courts of the United States can not exercise it. We can not take cognizance of a case not brought before us in conformity with the law.

In Reid *v.* United States, 211 U. S., 529, 539, Mr. Justice Holmes said referring to the question of jurisdiction:

> We observe that the plaintiff in error gives a hint at dissatisfaction with the Government for raising this point. But jurisdiction is not a matter of sympathy or favor. The courts are bound to take notice of the limits of their authority, and it is no part of the defendant's duty to help in obtaining an unauthorized judgment by surprise.

(b) A CORRECT CONSTRUCTION OF THE EXPEDITING ACT RESTRICTS THE USE OF THE CERTIFICATE TO CASES IN WHICH THERE IS AN EQUAL DIVISION OF OPINION.

The purpose of Congress in passing the act, as shown by the title, was to expedite the hearing and determination of the classes of cases enumerated therein. The title of the act is significant: "An act to expedite the hearing and determination of suits in equity pending or hereafter brought under the act of July second, eighteen hundred and ninety, entitled 'An act to protect trade and commerce against unlawful restraints and monopolies,' 'An act to regulate commerce,' approved February fourth, eighteen hundred and eighty-seven, or any other acts having a like purpose that may be hereafter enacted." The first section, after providing for the filing of a certificate by the Attorney-General stating that the case is of general public importance, declares—

> Thereupon such case shall be given precedence over others and in every way expedited, and be assigned for hearing at the earliest practicable day, before not less than three of the circuit judges of said circuit, if there be three or more; and if there be not more than two circuit judges, then before them and such district judge as they may select. In the event the judges sitting in such case shall be divided in opinion, the case shall be certified to the Supreme Court for review in like manner as if taken there by appeal as hereinafter provided.
>
> *

To secure expedition and at the same time careful consideration it was necessary to provide some method which should eliminate the intermediate appellate court and yet increase the dignity of the court of original jurisdiction. Therefore Congress declared that the cases should be heard, in the first instance, "before not less than three of the circuit judges" of the circuit in which the suit should be brought, "if there be three or more," with an appeal directly to this court. This arrangement insured full consideration and rendered more probable a correct determination by the court of original jurisdiction. So long as there were only three circuit judges in a circuit, the court would consist of those three judges, and in such cases the appeal provision of the second section would be sufficient to secure a review by this court, because a court consisting of an uneven number of judges can always enter a final decree which can be appealed from. But, at the time of the enactment of this law, two circuits (the second and eighth) had four circuit judges, and it was probable that others, through increase of business, would in time likewise have four; this has actually transpired in the seventh circuit. Therefore the danger that in a case brought in a circuit with four circuit judges, the judges might be equally divided in opinion and unable to enter a final decree, rendered necessary the incorporation into the act of the provision that on a division of opinion the case should be certified to the Supreme Court, as though appealed.

That this was the purpose of Congress in providing the use of the certificate appears from a reference to earlier acts in which Congress for a like reason had allowed a certificate.

It is a settled rule of statutory construction that, in order to ascertain the true meaning of a doubtful provision used in a law, resort may be had to prior acts containing the same provision which have received judicial construction. This rule Mr. Justice Brown, in *Hamilton* v. *Rathbone* (175 U. S., 414, 419), stated as follows:

> The real rule is perhaps settled that, when a statute is of doubtful meaning and susceptible upon its face of two constructions, the court may look into prior and contemporaneous acts, the reasons which induced the act in question, the mischiefs intended to be remedied, the extraneous circumstances, and the purpose intended to be accomplished by it, to determine its proper construction.

See also *Kepner* v. *United States* (195 U. S., 100,121, 124).

The first act of Congress providing for a certificate to this court is section 6 of the "Act to amend the judicial system of the United States," April 29, 1802, which provided (2 Stat., 159):

> That whenever any question shall occur before a circuit court, upon which the *opinions of the judges shall be opposed*, the point upon which the disagreement shall happen, shall, during the same term, upon the request of either party, or their counsel, be stated under the direction of the judges, and certified under

> the seal of the court, to the Supreme Court, at their next session to be held thereafter; and shall, by the said court, be finally decided. And the decision of the Supreme Court, and their order in the premises, shall be remitted to the Circuit Court, and be there entered of record, and shall have effect according to the nature of the said judgment and order: *Provided,* That nothing herein contained shall prevent the cause from proceeding, if, in the opinion of the court, farther proceedings can be had without prejudice to the merits. * * *

Before the passage of this act there had been no necessity for such a provision of law, because the circuit courts had theretofore been composed of *three* judges, and the justices of the Supreme Court changed their circuits, so that no difference of opinion arising between them could prevent a decision (1 Stat., 74). But the act of 1802, of which section 6 is a part, reduced the circuit court to *two* judges, and therefore it became necessary to provide for the contingency of the two judges constituting the circuit court being opposed in opinion. The result was section 6 quoted above.

> *United States* v. *Daniel*, 6 Wheat., 542, 547; *Ex parte Milligan*, 4 Wallace, 2, 111; *Insurance Company* v. *Dunham*, 11 Wallace, 1, 21; *Waterville* v. *Van Slyke*, 116 U. S., 699, 704; *United States* v. *Rider*, 163 U. S., 132, 136; *Paquete Habena*, 175 U. S., 677, 684; *Jewell* v. *Knight*, 123 U. S., 426; and *Chicago, Burlington & Quincy Ry.* v. *Williams*, 205 U. S., 444, where all the cases are reviewed.

In *United States* v. *Daniel* (*supra*) Mr. Chief Justice Marshall said:

> Previous to the passage of that act (of 1802), the circuit courts were composed of *three* judges, and the judges of the Supreme Court changed their circuits. *If all the judges were present, no division of opinion could take place.* If only one judge of the Supreme Court should attend, and a division should take place, the cause was continued until the next term, when a different judge would attend. Should the same division continue, there would then be the opinion of two judges against one; and the law provided, that in such case, that opinion should be the judgment of the court. But the act of 1802 made the judges of the Supreme Court stationary, so that the same judge constantly attends the same circuit. This great improvement of the preexisting system was attended with this difficulty. The court being always composed of the same two judges, any division of opinion would remain and the question would continue unsettled. To remedy this inconvenience the clause under consideration was introduced.

Again, in *Insurance Company* v. *Dunham* (*supra*), Mr. Justice Bradley said, speaking of an act which had increased the number of circuit judges but provided that two should sit together:

> * * * There is nothing in this act which alters the powers of the court, or obviates the difficulty which a certificate of division was intended to meet. That difficulty arose from

the fact that the court was constituted of two judges, between whom a difference of opinion would be likely often to occur, and thus block the wheels of justice. Other things being equal, a division of opinion is far more probable between *two* persons than is an equal division between any other even number of persons. This renders it desirable, when a court consists of the former number, to have some method provided for overcoming the intrinsic difficulty. Such a method was provided by the act of 1802 to meet the then constitution of the court, which consisted of a justice of the Supreme Court and the district judge.

The act of 1802 was superseded by the act of June 1, 1872 (17 Stat., 196), which provided:

> That whenever, in any suit or proceeding in a circuit court of the United States, being held by a justice of the Supreme Court and the circuit judge or a district judge, or by the circuit judge and a district judge, *there shall occur any difference of opinion between the judges* as to any matter or thing to be decided, ruled, or ordered by the court, the opinion of the presiding justice or the presiding judge shall prevail, and be considered the opinion of the court for the time being; but when a final judgment, decree, or order in such suit or proceeding shall be entered, if said judges shall certify, as it shall be their duty to do if such be the fact, that they differed in opinion as to any question which, under the act of Congress of April twenty-ninth, eighteen hundred and two, might have been reviewed by the Supreme

> Court on certificate of difference of opinion, then either party may remove said final judgment, decree, or order to the Supreme Court, on writ of error or appeal, according to the nature of the case, and subject to the provisions of law applicable to other writs of error or appeals in regard to bail and supersedeas.

The difference between the act of 1802 and the act last quoted was that under the former act the questions upon which the judges differed could be certified to this court before judgment, whereas under the latter act the opinion of the presiding judge prevailed for the time being, and after the entry of a final judgment and a certificate of division of opinion the case came to this court on writ of error or appeal. But the constitution of the circuit court and the consequent necessity for the provision under consideration remained the same.

The act of June 1, 1872, was in turn supplanted on June 22, 1874, by sections 650, 652, and 693 of the Revised Statutes, by which its provisions were restricted to civil suits and proceedings (*United States* v. *Rider*, 163 U. S., 132, 136); and by sections 651 and 697 by which the provisions of the act of 1802 were reenacted as to criminal cases. (*United States* v. *Sanges*, 144 U. S., 310; *United States* v. *Rider*, *supra*.)

Sections 650, 652, and 693 of the Revised Statutes are as follows:

> SEC. 650. Whenever, in any civil suit or proceeding in a circuit court held by a circuit justice

and a circuit judge or a district judge, or by a circuit judge and a district judge, there occurs any difference of opinion between the judges as to any matter or thing to be decided, ruled, or ordered by the court, the opinion of the presiding justice or judge shall prevail, and be considered the opinion of the court for the time being.

SEC. 652. When a final judgment or decree is entered in any civil suit or proceeding before any circuit court held by a circuit justice and a circuit judge or a district judge, or by a circuit judge and a district judge, in the trial or hearing whereof any question has occurred upon which the opinions of the judges were opposed, the point upon which they so disagreed shall, during the same term, be stated under the direction of the judges, and certified, and such certificate shall be entered of record.

SEC. 693. Any final judgment or decree, in any civil suit or proceeding before a circuit court which was held, at the time, by a circuit justice and a circuit judge or a district judge, or by the circuit judge and a district judge, wherein the said judges certify as provided by law, that their opinions were opposed upon any question which occurred on the trial or hearing of the said suit or proceeding, may be reviewed and affirmed or reversed or modified by the Supreme Court, on writ of error or appeal, according to the nature of the case, and subject to the provisions of law applicable to other writs of error or appeals in regard to bail and supersedeas.

These sections restricted the act of 1872 to civil suits; as before in case of a division of opinion between the *two* judges sitting, the opinion of the presiding judge prevailed for the time being, and the point upon which they disagreed was certified and entered of record; the case then came to this court by writ of error or appeal. Sections 651 and 697 of the Revised Statutes (June 24, 1874) provided for the certification of questions of law in criminal proceedings from the Circuit Court to the Supreme Court whenever any question occurred upon which the judges were "divided in opinion." In all these earlier statutes, regulating both civil and criminal procedure, the use of the certificate depended of necessity upon there being an equal division of the court and was restricted to questions of law.

By section 6 of the judiciary act of March 3, 1891, establishing circuit courts of appeals (26 Stats., 826, ch. 517), it was provided:

> SEC. 6. * * * Excepting that in every such subject within its appellate jurisdiction the circuit court of appeals at any time may certify to the Supreme Court of the United States any questions or propositions of law concerning which it desires the instruction of that court for its proper decision.
>
> And thereupon the Supreme Court may either give its instruction on the questions and propositions certified to it, which shall be binding upon the circuit courts of appeals in such case, or it may require that the whole record and cause may be sent up to it for its

consideration, and thereupon shall decide the whole matter in controversy in the same manner as if it had been brought there for review by writ of error or appeal.

And excepting also that in any such case as is hereinbefore made final in the circuit court of appeals it shall be competent for the Supreme Court to require, by certiorari or otherwise, any such case to be certified to the Supreme Court for its review and determination with the same power and authority in the case as if it had been carried by appeal or writ of error to the Supreme Court.

The foregoing act repealed the prior acts concerning certification of cases by the circuit court (*United States* v. *Rider, supra*).

Prior to the act of 1891, the certificate was made necessary by reason of the circuit court being composed of an equal number of judges; for the same reason, Congress, realizing that under the provisions of the expediting act the circuit court may be held by four judges, included this provision in order that the wheels of justice may not be blocked where the four judges are equally divided in opinion.

Appeal is the regular method for bringing the whole case from the lower to the appellate court, whereas the usual function of a certificate is the certification of a particular question of law to the higher court for decision. In all the statutes cited above the certificate has been restricted to its customary use as a method of bringing single definite propositions or questions of law to the appellate court for

decision. A construction of the expediting act which gives the same function to the certificate as to the appeal is at variance with the established and distinctive uses of the appeal and certificate.

The second section of the act under consideration provides for an appeal to this court from the final decree of the circuit court. Did Congress, by the use in the first section of the phrase "divided in opinion," intend to limit the use of the appeal provision of the second section so as to include only those cases in which the judges sitting were agreed and entered a unanimous final decree? If Congress had no intention of limiting the use of the appeal, a final decree should be entered where a *majority* of the court is of one opinion, as well as where the court is unanimously agreed, and the appeal provision should be resorted to for taking up the case.

To repeat, the first section of the act provides: "In the event the judges sitting in such case shall be divided in opinion, the case shall be certified to the Supreme Court for review in like manner as if taken there by appeal, as hereinafter provided." An interpretation that this means *any* division of opinion is so opposed to the apparent object of its adoption, as ascertained from prior acts containing the provision for a certificate, which were passed under similar conditions as to the constitution of the court, and is so inconsistent with the provision for appeal in the second section of the act, that it can not fairly be said that a literal construction would carry out the intention of Congress in enacting the

law. The rule of construction which authorizes the limiting of general expressions in a statute so as not to force a narrow, strained, and unnatural construction upon a subsequent section, has many times been plainly expressed by this court.

In *Pennington* v. *Coxe* (2 Cr., 33, 52), Mr. Chief Justice Marshall gave expression to it in this language:

> That a law is the best expositor of itself; that every part of an act is to be taken into view for the purpose of discovering the mind of the legislature; and that the details of one part may contain regulations restricting the extent of general expressions used in another part of the same act, are among those plain rules laid down by common sense for the exposition of statutes which have been uniformly acknowledged.

See also:

> *Alexander* v. *Mayor, etc.*, 5 Cr., 1, 7.
> *Peck* v. *Jenness*, 7 How., 612, 623.
> *Brown* v. *Duchesne*, 19 How., 194.
> *Bernier* v. *Bernier*, 147 U. S., 242, 246.

The second section of the expediting act does not state that the use of the appeal shall be limited to cases where the lower court is unanimously agreed. The presumption is that, in the absence of any such express limitation, Congress intended that it should operate from majority as well as unanimous decrees. Such a construction of the second section accords with universal practice concerning appeals, whereas any other construction necessitates a radical departure

from the policy of the law that a majority of a court may enter a decree which can be appealed from.

An interpretation to the effect that "divided in opinion" means *any* division of opinion would lead to another illogical construction of the last sentence of section 1. It is clear that the Supreme Court will refuse to consider a case unless the lower court has rendered a decision and entered a decree for the appellate court to consider, when it was within the power of the lower court to have decided. There must be a decree and an assignment of errors for the appellate court to examine. If the lower court was divided two and one, the Supreme Court would not allow it to certify the whole case and record without decision, for, on such a division, it would be the duty of the circuit court to enter a decree. But if we should construe the last sentence of section 1 as applying to divisions by the court, two to one, and as requiring a certification of the record after decree with an assignment of errors, then the method of review reached by section 1 in cases of division two to one would be exactly the same as that granted by section 2. In such a case the record would go up just as if by appeal. It is evident that, in order to give to the two sections an interpretation which will make them supplemental to each other and not overlapping, the last sentence in section 1 must be construed as indicating the method to be adopted in bringing the case to the Supreme Court only when the circuit judges are "equally"

divided in opinion, so that they are without power to render a decree, and when there can be no assignment of errors.

This court itself uses the word "divided" in the sense of "equally" divided. During the last term, in case No. 238, *Chicago & Alton Railroad Company* v. *United States* (also cases Nos. 239 and 240), the words were so used (212 U. S., 563). That was a criminal case which came to the Supreme Court on a writ of certiorari on the petition of the railroad company. Mr. Justice Moody did not sit, and the court being divided four and four, the judgment below was affirmed. The announcement of the court reads:

> Judgments affirmed by a divided court.

Here, then, we have the use by the Supreme Court of the word "divided" in the sense of "equally divided."

So also the court divided four and four in *Eidman* v. *Tilghman* (203 U. S., 580), a tax case, which came to the Supreme Court on writ of certiorari and was argued in October, 1906, after Mr. Justice Brown left the bench and before Mr. Justice Moody was appointed. The decision of the court was announced as follows:

> Judgment affirmed with costs by a divided court, and cause remanded, etc.

A construction of the statute which gives to the words "divided in opinion" the sense of an "equal" division and accords to the appeal provision of section 2 the effect it has always had without at-

tempting to restrict that method of review by this court, is a construction consistent with the previously ascertained and judicially determined uses of both methods of review, whereas a literal interpretation of the phrase in question not only confers upon the certificate an office it has never before performed, but restrains and narrows the language of the second section of the act by limiting the customary use of an appeal. We do not think that Congress intended by such general language to change the respective spheres of action of the certificate and appeal but rather intended that each mode of review should be used in the cases to which it had theretofore had application—the certificate in cases where, by reason of the constitution of the court below, no decision can be rendered, and the appeal in all cases in which a final decree can be entered.

The language in *Claflin* v. *Commonwealth Insurance Company* (110 U. S., 81, 92) is in point:

> We are bound to take the words of the law in their usual, ordinary, literal meaning, and to construe the two provisions in the different sections in the same sense which, in previous statutes, has uniformly been given to them, and not invent a new application and relation of the two clauses without any indication whatever on the part of Congress to that effect.

As Congress has given no indication that it intended to narrow the use of the appeal, we are not at liberty to invent any new application of it, but in each pro-

vision of this act we must accord to the terms "certificate" and "appeal" the meaning which the two methods of review have heretofore had.

A construction of the statute which sends to this court cases in which a majority of the lower court is agreed is inconsistent with other acts of Congress relieving this court of much unnecessary appellate jurisdiction.

It may finally be said that a construction of the expediting act which would require the certification to this court of all cases in which there was any division in the court below, would render that act unconstitutional, because, if so interpreted, it would confer original jurisdiction upon this court in cases in which the Constitution has not given such original jurisdiction. (*White* v. *Turk*, 12 Pet., 238; *Webster* v. *Cooper*, 10 How., 54; *United States* v. *Perrin*, 131 U. S., 55; *Jewell* v. *Knight*, 123 U. S., 452.)

The only justification for sending any case to this court without a decision below is that the judges below are equally divided and are therefore unable to render a decision. Such a situation would "block the wheels of justice," as Mr. Justice Bradley said in *Insurance Co.* v. *Dunham* (11 Wall., p. 21). But, in cases in which the judges below are not equally divided, a decision of the whole case may and must be rendered. It thus appearing that a construction of the expediting act which would necessitate the certification to this court of every case in which the judges below are not unanimous would render that act unconstitutional, such construction ought not to

be adopted, but the words "divided in opinion" should be given the meaning they have always had in our judicial history.

The construction which the Government here places upon the provisions of the expediting act has met with judicial approval in the case of the *Southern Pacific Terminal Co.* v. *Interstate Commerce Commission*, decided by Circuit Judges Pardee, McCormick, and Shelby of the fifth circuit (166 Fed., 134). In that case after the court, in a decree made by a majority of the judges, had overruled the motion for a temporary injunction, the complainants moved to certify the case to the Supreme Court on the ground that the judges had differed in opinion, two of the judges having been of the opinion that the motion for an injunction should be overruled and one of the opinion that the motion for an injunction should be granted and the order refusing the injunction having been entered by a majority of the judges. The court unanimously overruled the motion for a certificate, holding that the term "divided in opinion" is applicable only to cases where there is such a division of opinion that it is impossible to enter a decree. Circuit Judge Pardee said that after final decree the case may be carried by appeal to the Supreme Court, "and the only office left for the certificate is in the contingency that the judges shall be unable to agree on a final decree." He also said (p. 136):

> The sixteenth section of the interstate commerce act, as amended (and above mentioned), provides for an appeal to the Supreme Court

from an interlocutory order granting or continuing an injunction, but no appeal from an order refusing a preliminary injunction is provided for in that act. Under the expediting act per se, when the judges were divided in opinion, the case was to be certified to the Supreme Court in like manner as by the appeal thereinafter provided. *We have suggested that this provision could only be of value in a case where the division of opinion among the judges on final hearing was such as to prevent a final decree.* The question now is whether the same reasoning is to apply in cases where the judges differ in opinion as to whether an application for a preliminary injunction shall be granted or refused, but where the majority of the judges can and do render a decree. If such decree grants the injunction the Interstate Commerce Commission can appeal, and no certificate is necessary. If such decree refuses the injunction the complainant can not appeal. This is an apparent hardship to the complainant, but it is equally apparent that Congress so intended it. However that may be, such hardship is not sufficient to warrant us in construing the provision in regard to a certificate in case of division of opinion otherwise than as meaning that *a certificate is only proper and necessary where, through division of opinion, no decisive decree can be rendered.*

The constitutionality of the expediting act was upheld by the three circuit judges of the first circuit in *United States* v. *New York, New Haven and Hartford Railroad Co.*, 165 Fed., 742.

Therefore, as it clearly appears that this court is without jurisdiction at this time to pass upon the merits of the case owing to the manner in which it has been brought before the court, it is respectfully submitted that the certificate should be dismissed and the case remanded to the circuit court with instructions to enter a decree in accordance with the opinion of the majority of that court.

II.

The power to regulate the charges of public service corporations is one of the inherent powers of government; and the power to regulate the charges of interstate carriers is one expressly conferred upon Congress by the commerce clause of the Constitution.

In importance to the country at large no issue presented to this court in recent years surpasses that raised on the merits of the present case. The whole power of the Government to regulate interstate railroads is directly challenged.

Counsel for the carriers here contend, in effect, that rate regulation is a matter solely for the courts; that no charge for transportation service can be established by law without a judicial determination as to its reasonableness; that Congress is without power to confer upon the Interstate Commerce Commission the duty of ascertaining and declaring what are just and reasonable rates; and, finally, that even if the commission may be given this power its orders constitute only a temporary stage in the inquiry as to what is a just and reasonable rate, which question must at last be settled by the Supreme Court.

This amounts to saying that the only power of Congress over the rates to be charged by railroads engaged in interstate commerce is to make the superfluous declaration that they shall be just and reasonable. In other words, if the position of the railroads in this case is correct there is no power anywhere except in the railroads to fix their charges for the transportation of interstate commerce; Congress may only declare by statute that which is their duty at common law; if the railroads do not obey the statute the courts in specific cases, brought to test the reasonableness of specific rates, must examine the question and if they find the rate to be unreasonable the railroads may then establish a lower rate, and other proceedings being brought to test the reasonableness of the last rate the controversy will continue until some rate is fixed by the railroads which the courts will refuse to disturb.

Our answer to this contention is that it would defeat all rate regulation. If the reasonableness of rates is purely a judicial question, then Congress itself can not fix rates except subject to reexamination and approval by the courts. If Congress has the power to fix rates itself but can not commit to a commission the duty of ascertaining particular facts upon which a general law operates, Congress might as well not possess the power, for its exercise by Congress directly is impracticable and impossible. If Congress may empower a commission to ascertain what are just and reasonable rates and to require the railroads to conform to this standard but the

commission's orders are without force or efficacy until the questions involved are reexamined and the conclusions reached are approved by the courts, the commission might as well not possess the power, for its intervention in the matter would merely delay the final determination.

We submit that Congress itself has power to fix the rates to be charged by railroads engaged in interstate commerce; that Congress may confer upon a commission the power to ascertain whether rates in force conform to the standard fixed by Congress, and if they do not, then to require such rates as will conform to this standard; and, finally, that the rates so fixed by Congress and the commission become the law, and their reasonableness is not reviewable by the courts unless they amount to a confiscation of property.

A long line of decisions of this court sustains the proposition that the power to regulate the charges of public-service corporations is one of the powers of government inherent in every sovereignty.

Munn v. *Ill.*, 94 U. S., 113.
C., B. & Q. R. R. Co. v. *Ia.*, 94 U. S., 155.
Ruggles v. *Ill.*, 108 U. S., 526.
Stone v. *Farmers Loan & Trust Co.*, 116 U. S., 307.
Wabash R. R. Co. v. *Ill.*, 118 U. S., 557.
Chicago R. R. Co. v. *Minn.*, 134 U. S., 418.
Reagan v. *Farmers Loan & Trust Co.*, 154 U. S., 362.
Smyth v. *Ames*, 169 U. S., 466.

Prentis v. *Atlantic Coast Line*, 211 U. S., 210.
Home Telephone Co. v. *Los Angeles*, 211 U. S., 266.
Wilcox v. *Consolidated Gas Co.*, 212 U. S., 19.
Knoxville v. *Knoxville Water Co.*, 212 U. S., 1.

In *Munn* v. *Illinois*, *supra*, Mr. Chief Justice Waite said:

> In countries where the common law prevails it has been customary from time immemorial for the legislature to declare what shall be a reasonable compensation under such circumstances, or, perhaps more properly speaking, to fix a maximum beyond which any charge made would be unreasonable. * * * The controlling fact is the power to regulate at all. If that exists, the right to establish the maximum of charge, as one of the means of regulation, is implied.

The same Chief Justice in *C., B. & Q. R. R. Co.* v. *Iowa*, *supra*, said:

> Railroad companies are carriers for hire. They are incorporated as such, and given extraordinary powers in order that they may the better serve the public in that capacity. They are, therefore, engaged in a public employment affecting the public interest, and, under the decision in *Munn* v. *Illinois*, *supra*, p. 113, subject to legislative control as to their rates of fare and freight, unless protected by their charters.

In *Smyth* v. *Ames*, *supra*, Mr. Justice Harlan said:

> A railroad is a public highway, and none the less so because constructed and maintained

> through the agency of a corporation deriving its existence and power from the State.
>
> A corporation maintaining a public highway, although it owns the property it employs for accomplishing public objects, must be held to have accepted its rights, privileges, and franchises subject to the condition that the government creating it, *or the government within whose limits it conducts its business,* may by legislation protect the people against unreasonable charges for the service rendered by it.

In *Home Telephone Co.* v. *Los Angeles, supra,* Mr. Justice Moody said:

> The power to fix, subject to constitutional limits, the charges of such a business as the furnishing to the public of telephone service is among the powers of government, is legislative in its character, continuing in its nature, and capable of being vested in a municipal corporation.

It is true that the foregoing cases concern only the regulation by state legislatures of the charges of public-service corporations. But the principle established is that there is inherent in the sovereignty of every government the power to protect its people against the exaction of unreasonable charges by the owners of property devoted to a public service. As Mr. Justice Harlan says, in the case cited above, a railroad company is subject to the legislative control either of the government which creates it, "*or the government within whose limits it conducts its business.*"

In our Government any doubt that might arise upon the question has been silenced by the express grant of power to Congress in the commerce clause of the Constitution. The power conferred in section 8, of article 1, "to regulate commerce * * * among the several States," expressly authorizes the control of rates and fares by railroads operating between the States. To hold otherwise would lead to the result that while the charges upon the railroads within the States may be controlled by the legislatures thereof, no power exists anywhere to control the charges upon railroads operating between the States. Such a conclusion would destroy the fundamental principle announced in the cases cited above, that public-service corporations are subject to regulation by the government within whose limits their business is conducted.

That the fixing of a rate for transportation is a regulation of commerce has been decided many times by this court. As long ago as *Gibbons* v. *Ogden* (9 Wheat., 1), Chief Justice Marshall, speaking of the power conferred upon Congress in the commerce clause of the Constitution, says, at page 196:

> It is the power to regulate—that is, to prescribe the rule by which commerce is to be governed. This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution.

In the same case Mr. Justice Johnson, at page 229, in defining the broad significance of the word "commerce," says "the subject, the vehicle, the agent, and their various operations become the objects of commercial regulation."

In *Wabash, etc., R. R. Co.* v. *Ill.* (118 U. S. 557), where this court held unconstitutional a state statute which attempted to affect rates for the transportation of property beyond the limits of the State, Mr. Justice Miller, writing the opinion, says, at page 577:

> As restricted to a transportation which begins and ends within the limits of the State it may be very just and equitable, and it certainly is the province of the State legislature to determine that question. But when it is attempted to apply to transportation through an entire series of States a principle of this kind, and each one of the States shall attempt to establish its own rates of transportation, its own methods to prevent discrimination in rates, or to permit it, the deleterious influence upon the freedom of commerce among the States and upon the transit of goods through those States can not be overestimated. *That this species of regulation is one which must be, if established at all, of a general and national character*, and can not be safely and wisely remitted to local rules and local regulations, we think is clear from what has already been said. And if it be a regulation of commerce, as we think we have demonstrated it is, and as the Illinois court concedes it to be, *it must be of that national character, and the regulation*

> *can only appropriately exist by general rules and principles, which demand that it should be done by the Congress of the United States under the commerce clause of the Constitution.*

Even the three judges who dissented in the Wabash case on the ground that Congress not having legislated in the matter the States were free to act admitted that federal legislation would have been constitutional. Chief Justice Waite, writing the dissenting opinion, said (p. 581):

> No one disputes that Congress might, if it saw fit, under its power to regulate commerce among the several States, regulate the matter under consideration; but it has not done so.

In *Philadelphia S. S. Co.* v. *Pennsylvania* (122 U. S., 326), in which this court decided that a state tax upon the gross receipts of a steamship company derived from the transportation of persons and property between different States, and to and from foreign countries, was in conflict with the powers of Congress under the Constitution, the following language was used (p. 338):

> If the regulation of the transportation belongs to the power of Congress to regulate commerce, the regulation of fares and freights receivable for such transportation must equally belong to that power; and any burdens imposed by the State on such receipts must be in conflict with it. To apply the language of Chief Justice Marshall, fares and freights for transportation in carrying

> on interstate or foreign commerce are as much essential ingredients of that commerce as transportation itself.

In the *Northern Securities case* (193 U. S., 197, 368) Mr. Justice White said:

> The plenary authority of Congress over interstate commerce, its right to regulate it to the fullest extent, *to fix the rates to be charged for the movement of interstate commerce*, to legislate concerning the ways and vehicles actually engaged in such traffic, and to exert any and every other power over such commerce which flows from the authority conferred by the Constitution, is thus conceded.

The foregoing citations definitely establish the proposition that in fixing rates for the transportation of passengers or property the power exercised, whether it be by a state legislature or by Congress, is a regulation of commerce, and, under the commerce clause of the Constitution, one of the methods by which Congress may regulate interstate commerce is to fix such rates.

III.

Congress may confer upon a commission the power to ascertain what rate as a maximum will be just and reasonable, and to enforce the law requiring that no higher rates shall be charged.

By the act of June 29, 1906, Congress has conferred upon the Interstate Commerce Commission the power to fix maximum rates. For nearly twenty years the original interstate commerce act had been on trial.

Its want of real effectiveness had been clearly demonstrated. The orders of the commission meant little more than the commencement of a law suit. The commission was without power to establish rates, as this court found in the Maximum Rate Case (167 U. S., 479); and while its opinions and orders, finding a particular rate unreasonable, were always given consideration by the courts, they were subject to the same review as if the commission had been appointed by the court to examine the question and report its conclusions. In other words, the functions of the commission were merely those of a referee appointed to make a preliminary investigation and report upon matters for subsequent judicial examination, and the facts found by the commission were merely *prima facie* evidence in such judicial proceedings. (*K. & I. Bridge Co.* v. *L. & N. R. R. Co.*, 37 Fed., 567; *C., N. O. & T. P. R. R.* v. *Interstate Commerce Commission*, 162 U. S., 184.)

All this is changed by the so-called Hepburn Act of June 29, 1906. Congress now declares the general rule that railroad rates for interstate transportation shall be reasonable and just, and empowers the Interstate Commerce Commission to enforce this rule by determining and prescribing the maximum of rates, which, in its judgment, after a full hearing, will be reasonable and just. By section 1 of the act, as amended, Congress declares the standard of rates and prohibits therein any departure from such standard; all charges for the transportation of passengers or property "shall be just and reasonable; and every

unjust and unreasonable charge" is declared to be unlawful and prohibited. By section 2 undue discrimination is defined and forbidden. By section 3 undue or unreasonable preference or advantage is forbidden. By section 12 the commission "is authorized and required to execute and enforce the provisions of this act." By section 13 the commission is empowered to investigate any complaints filed with it and may institute inquiry on its own motion. By section 14 the commission is required to make report, in writing, stating its conclusions and decisions upon any investigation made by it. By section 15 the commission is required, after full hearing upon complaint, whenever it is of the opinion that rates and charges are unjust or unreasonable, unjustly discriminatory, unduly preferential or otherwise in violation of any of the provisions of the act, to determine and prescribe what will be the just and reasonable rate to be thereafter observed as the maximum to be charged, and to make an order that the carrier shall cease and desist from such violation of the law, and shall not thereafter demand or collect any rate or charge in excess of the maximum prescribed by the commission. By section 16 the commission shall, if it determines that any party is entitled to an award of damages on account of any violation of the statute, make an order directing the carrier to pay to the complainant the sum to which he is entitled; and, finally, the commission by various sections of the statute is authorized to make rules

and regulations respecting the filing and publishing of tariffs and the making of reports to the commission.

For the convenience of the court and counsel we have printed, as an appendix of this brief, the full text of the act of February 4, 1887, as in effect prior to June 29, 1906, together with the provisions of the act of June 29, 1906, set out in parallel columns, so that the exact changes in the law may be readily seen.

The more important provisions of the act of June 29, 1906 (34 Stat., 584), which are in point in the case at bar, are in full as follows:

> SECTION 1. * * * All charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, shall be just and reasonable; and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful.
>
> SEC. 15. That the commission is authorized and empowered, and it shall be its duty, whenever, after full hearing upon a complaint made as provided in section thirteen of this Act, or upon complaint of any common carrier, it shall be of the opinion that any of the rates, or charges whatsoever, demanded, charged, or collected by any common carrier or carriers, subject to the provisions of this Act, for the transportation of persons or property as defined in the first section of this Act, or that any regulations or practices whatsoever of such carrier or carriers affecting such rates, are unjust or unreasonable, or unjustly dis-

criminatory, or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this Act, to determine and prescribe what will be the just and reasonable rate or rates, charge or charges, to be thereafter observed in such case as the maximum to be charged; and what regulation or practice in respect to such transportation is just, fair, and reasonable to be thereafter followed; and to make an order that the carrier shall cease and desist from such violation, to the extent to which the commission find the same to exist, and shall not thereafter publish, demand, or collect any rate or charge for such transportation in excess of the maximum rate or charge so prescribed, and shall conform to the regulation or practice so prescribed. All orders of the Commission, except orders for the payment of money, shall take effect within such reasonable time, not less than thirty days, and shall continue in force for such period of time, not exceeding two years, as shall be prescribed in the order of the Commission, unless the same shall be suspended or modified or set aside by the Commission or be suspended or set aside by a court of competent jurisdiction. Whenever the carrier or carriers, in obedience to such order of the Commission or otherwise, in respect to joint rates, fares, or charges, shall fail to agree among themselves upon the apportionment or division thereof, the Commission may after hearing make a supplemental order prescribing the just and reasonable proportion of such joint rate to be received by

each carrier party thereto, which order shall take effect as a part of the original order.

The Commission may also, after hearing on a complaint, establish through routes and joint rates as the maximum to be charged and prescribe the division of such rates as hereinbefore provided, and the terms and conditions under which such through routes shall be operated, when that may be necessary to give effect to any provision of this Act, and the carriers complained of have refused or neglected to voluntarily establish such through routes and joint rates, provided no reasonable or satisfactory through route exists, and this provision shall apply when one of the connecting carriers is a water line.

* * * * *

The foregoing enumeration of powers shall not exclude any power which the Commission would otherwise have in the making of an order under the provisions of this act.

Section 13, referred to in the last section, is as follows:

That any person, firm, corporation, or association, or any mercantile, agricultural, or manufacturing society, or any body politic or municipal organization complaining of anything done or omitted to be done by any common carrier subject to the provisions of this act in contravention of the provisions thereof, may apply to said Commission by petition, which shall briefly state the facts; whereupon a statement of the charges thus made shall be forwarded by the Commission to such common

carrier, who shall be called upon to satisfy the complaint or to answer the same in writing within a reasonable time, to be specified by the Commission. If such common carrier, within the time specified, shall make reparation for the injury alleged to have been done, said carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such carrier shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper.

Said Commission shall, in like manner, investigate any complaint forwarded by the railroad commissioner or railroad commission of any State or Territory, at the request of such commissioner or commission, and may institute any inquiry on its own motion in the same manner and to the same effect as though complaint had been made.

No complaint shall at any time be dismissed because of the absence of direct damage to the complainant.

Direct investigation by Congress into each particular rate and legislation thereon are impracticable by reason of the vast number of interstate rates and also because of the many subjects and interests continually requiring congressional action. Therefore Congress went no further than to declare what the general rule

should be and to impose upon the Interstate Commerce Commission the duty of enforcing that rule by seeing to it that every rate complained of to the Commission is made reasonable and just. A denial to Congress of the right to delegate to a commission the power to ascertain the fact in each particular case as to whether or not the rate or regulation complained of is reasonable and just and to act thereon in conformity with the rule would exclude Congress from all practical supervision over the making of interstate rates by the railroads.

In England, from time immemorial, the charges for public service of every kind have been regulated by law, and as early as the seventeenth century Parliament conferred upon justices of the peace, acting administratively, the power annually "to assess and rate the prices of all land-carriage of goods whatsoever, to be brought into any place or places within their respective limits and jurisdictions, by any common carrier or wagoner; and the rates and assessments so made to certify to the several mayors, and other chief officers of each respective market-town," and provided further that "no such common wagoner or carrier shall take for carriage of such goods and merchandises, above the rates and prices set, upon pain to forfeit for every such offense the sum of five pounds," etc. (2 Bacon's Abridgment, 160.)

Surely, if three hundred years ago conditions were such in the business of transporting merchandise that the Parliament of England found it expedient to commit to inferior agencies the fixing of rates for public

carriage rather than to establish such rates by general laws, the enormous growth of trade and transportation, over great areas and by thousands of different routes and systems, in this country to-day would indicate the greater necessity not only for regulation but for intrusting the details of rate making to an administrative commission.

Forty States of the Union have established railroad commissions, or similar administrative tribunals, and upon many of them the power to regulate rates has been conferred. The rate-making power of such commissions has been uniformly upheld and is no longer open to question.

Railroad Commission Cases, 116 U. S., 307.
Reagan v. *Farmers' Loan & Trust Co.*, 154 U. S., 362.
Tilley v. *Railway Co.*, 5 Fed., 641.
Chicago, etc., Ry. Co. v. *Dey*, 35 Fed., 866.
C. B. & Q. Ry. Co. v. *Jones*, 149 Ill., 361.
Georgia Ry. Co. v. *Smith*, 70 Ga., 694.
Express Co. v. *Railroad Co.*, 111 N. C., 472.
McWhirter v. *Pensacola R. R. Co.*, 24 Fla., 471.
Steenerson v. *Gt. Northern Ry. Co.*, 69 Minn., 353.

In *Reagan* v. *Farmers' Loan & Trust Co.*, *supra*, Mr. Justice Brewer said (154 U. S., 393):

> Passing from the question of jurisdiction to the act itself, there can be no doubt of the general power of a State to regulate the fares and freights which may be charged and received by railroad or other carriers, and that *this regulation can be carried on by means of a commission. Such a commission is merely an administrative board created by the State for carrying*

> *into effect the will of the State as expressed by its legislation. Railroad Commission Cases,* 116 U. S., 307. No valid objection, therefore, can be made on account of the general features of this act; those by which the State has created the railroad commission and entrusted it with the duty of prescribing rates of fares and freights as well as other regulations for the management of the railroads of the State.

United States Circuit Judge Noyes says in his book on American Railroad Rates (p. 207):

> When a commission, in the exercise of power delegated by the legislature, makes a rate the result is the same as if the legislature directly acted. The act of the commission supplements and makes effective the act of the legislature. The rate resulting from the joint action of the legislature and its agent *is* the law. Making a rate in legal effect is making a law that such shall be the rate. The courts have only one inquiry with respect to such a rate—is it constitutional?

A dictum of Mr. Justice Brewer in *Interstate Commerce Commission* v. *Cincinnati, New Orleans & Texas Pacific Ry. Co.* (167 U. S., 479, 494), plainly intimates that Congress has the power to regulate rates through a commission:

> Before the passage of the act it was generally believed that there were great abuses in railroad management and railroad transportation, and the grave question which Congress had to consider was how those abuses should be corrected and what control should be taken of the

> business of such corporations. The present inquiry is limited to the question as to what it determined should be done with reference to the matter of rates. There were three obvious and dissimilar courses open for consideration. Congress might itself prescribe the rates; *or it might commit to some subordinate tribunal this duty;* or it might leave with the companies the right to fix rates, subject to regulations and restrictions, as well as to that rule which is as old as the existence of common carriers, to wit, that rates must be reasonable. There is nothing in the act fixing rates. Congress did not attempt to exercise that power, and if we examine the legislative and public history of the day it is apparent that there was no serious thought of doing so.

The statute under consideration in *Stone* v. *Farmers' Loan & Trust Co.* (116 U. S., 307) declared that rates should be just and not discriminatory, and then provided for the appointment of a commission to fix the rates. The supreme court of Mississippi held that the grant to this commission of the administrative powers conferred was not in conflict with the constitution of that State and Mr. Chief Justice Waite said (p. 336): "To this we agree, and that is all that need be decided in this case."

The interstate commerce act, as amended June 29, 1906, does not, in any true sense, confer upon the commission legislative or judicial powers. Congress prescribes the general rule or standard with respect to rates, and the sole province of the commission is to ascertain whether or not existing rates conform

to such rule or standard, and, if they do not, to see that they do. In other words, the commission inquires into and finds the facts upon which the legislation of Congress operates. If a rate in force is found to be reasonable, the statute is satisfied. If after inquiry and hearing a rate is found to be unreasonable, the commission determines what rate, under all the facts and circumstances, would be reasonable, and this rate, when so fixed, becomes a part of the act of Congress in all respects as if it had been written in the statute.

It is no new departure in legislation for Congress to confer upon commissions, boards, or individual officers the power to determine the existence of facts or conditions upon which depends the operation of a statute.

Field v. *Clark*, 143 U. S., 693.
Buttfield v. *Stranahan*, 192 U. S., 470.
Union Bridge Co. v. *United States*, 204 U. S., 364.
St. Louis, Iron Mountain & Southern Ry. Co. v. *Taylor*, 210 U. S., 281.

In the tariff act of 1890, it was provided, in substance, that the free importation of certain articles should be suspended as to any country producing and exporting them that imposed exactions and duties on certain products of the United States, which the President deemed reciprocally unequal and unreasonable. Authority fully as large is conferred upon the President by the maximum and

minimum provisions of the tariff act of August 5, 1909. The statute of 1890 was attacked as a delegation of legislative power. This court in passing upon it in *Field* v. *Clark* (143 U. S., 693) said:

> Nothing involving the expediency or the just operation of such legislation was left to the determination of the President. The words, "he may deem," in the third section, of course, implied that the President would examine the commercial regulations of other countries producing and exporting sugar, molasses, coffee, tea, and hides, and form a judgment as to whether they were reciprocally equal and reasonable or the contrary in their effect upon American products. But when he ascertained the fact that duties and exactions, reciprocally unequal and unreasonable, were imposed upon the agricultural or other products of the United States by a country producing and exporting sugar, molasses, coffee, tea or hides, it became his duty to issue a proclamation declaring the suspension, as to that country, which Congress had determined should occur. He had no discretion in the premises except in respect to the duration of the suspension so ordered.

In the case of *Buttfield* v. *Stranahan* (192 U. S., 470) this court was passing upon the validity of an act authorizing the Secretary of the Treasury, upon the recommendation of a board of experts, to fix and establish uniform standards of tea, and making unlawful the importation of any teas inferior to the standard so established. The court disposes of the

contention that this is a delegation of legislative power, as follows:

> We may say of the legislation in this case, as was said of the legislation considered in *Field* v. *Clark*, that it does not, in any real sense, invest administrative officials with the power of legislation. Congress legislated on the subject as far as was reasonably practicable, and from the necessities of the case was compelled to leave to executive officials the duty of bringing about the result pointed out by the statute. To deny the power of Congress to delegate such a duty would, in effect, amount but to declaring that the plenary power vested in Congress to regulate foreign commerce could not be efficaciously exerted.

In the *Union Bridge case* (204 U. S., 364) this court upheld a statute authorizing the removal or alteration of bridges which, in the judgment of the Secretary of War, were unreasonable obstructions to navigation. In sustaining the act the court used these apt words, at page 386:

> Beyond question, if it had so elected, Congress, in some effective mode and without previous investigation through executive officers, could have determined for itself, primarily, the fact whether the bridge here in question was an unreasonable obstruction to navigation, and, if it was found to be of that character, could by direct legislation have required the defendant to make such alterations of its bridge as were requisite for the

> protection of navigation and commerce over the waterway in question. But investigations by Congress as to each particular bridge alleged to constitute an unreasonable obstruction to free navigation and direct legislation covering each case separately, would be impracticable in view of the vast and varied interests which require national legislation from time to time. By the statute in question Congress declared in fact that navigation should be freed from unreasonable obstructions arising from bridges of insufficient height, width of span or other defects. It stopped, however, with this declaration of a general rule and imposed upon the Secretary of War the duty of ascertaining what particular cases came within the rule prescribed by Congress, as well as the duty of enforcing the rule in such cases.

So in the interstate commerce act Congress, if it had so elected, might, in some effective mode, have determined for itself primarily what rates were reasonable for the transportation of passengers and property. But investigations by Congress as to each particular rate alleged to be unjust or unreasonable, and direct legislation covering each rate separately, would be impracticable, in view of the vast and varied interests which require national legislation from time to time; and by the act, therefore, Congress declared, in effect, that transportation in interstate commerce should be free from unreasonable rates and from unjust and unreasonable charges, and stopped with this general declaration of the rule,

imposing upon the Interstate Commerce Commission the duty of ascertaining what particular rates come within the rule prescribed by Congress, as well as the duty of enforcing the rule in each case.

In the very recent decision by this court of *St. Louis, Iron Mountain & Southern Ry. Co.* v. *Taylor* (210 U. S., 281) it was held that Congress in giving to the Interstate Commerce Commission authority to fix the uniform and standard height of drawbars for freight cars, under the safety-appliance act of March 2, 1893, had not delegated legislative powers. Mr. Justice Moody, delivering the opinion, said, at page 287:

> It is contended that there is here an unconstitutional delegation of legislative power to the Railway Association and to the Interstate Commerce Commission. This is clearly a federal question. Briefly stated, the statute enacted that after a date named only cars with drawbars of uniform height should be used in interstate commerce, and that the standards should be fixed by the association and declared by the commission. Nothing need be said upon this question except that it was settled adversely to the contention of the plaintiff in error in *Buttfield* v. *Stranahan* (192 U. S., 470), a case which in principle is completely in point.

These cases fully sustain the proposition that the duty imposed upon the Interstate Commerce Commission to ascertain what are just and reasonable rates, and enforce the law requiring that such rates only shall be charged, is not a delegation of legisla-

tive power, and does not violate the provisions of the Constitution dividing governmental power into legislative, executive, and judicial.

IV.

The act is not unconstitutional in that it makes the orders of the commission prescribing rates for the future effective on a day certain, without a previous judicial determination that existing rates are unlawful.

Counsel for the railroads contend that article 5 of the amendments to the Constitution of the United States is violated by that provision of the statute which reads:

> All orders of the commission, except orders for the payment of money, shall take effect within such reasonable time, not less than thirty days, and shall continue in force for such period of time, not exceeding two years, as shall be prescribed in the order of the commission, unless the same shall be suspended or modified or set aside by the commission *or be suspended or set aside by a court of competent jurisdiction.* (Section 15, 34 Stat. 589.)

The contention of complainants is that before any rate other than that fixed by the carriers can become effective a court must, by its decree, find the existing rate unlawful; and the case upon which they rely is *Chicago, Milwaukee & St. Paul Ry. Co.* v. *Minnesota*, 134 U. S., 418. Counsel in drafting the amended bill of complaint quote from the decision of Mr. Justice Blatchford, at page 457, as follows: "It deprives the company of its right to a judicial investigation, by due process of law, under the forms and with the

machinery provided by the wisdom of successive ages for the investigation judicially of the truth of a matter in controversy."

The *Minnesota case* does not in any sense support the view either that an existing rate fixed by the railroads must first be declared unlawful by the courts before a new rate can be fixed by a commission, or that a new rate fixed by a commission can not be made effective until it has been approved by the courts. All that is held is, that a statute of Minnesota, which attempted to authorize a state railroad commission, *without notice or hearing*, to establish railroad rates, and attempted to make the order of the commission *final and conclusive without any power in the courts to protect the carriers from a confiscation of property*, violated the Federal Constitution. While it is true that Mr. Justice Blatchford in delivering the opinion says that the act was defective because it gave no opportunity to the railroads to be heard in the courts upon the question of the "reasonableness" of rates fixed by the commission, it is quite apparent that what is meant is that a statute *which denies any review* in the courts might impose upon railroads rates which were so unreasonable as to constitute a taking of property without compensation. In the same opinion, however, equal emphasis is put upon the fact (p. 457) that "no hearing is provided for, no summons or notice to the company before the commission has found what it is to find and declared what it is to declare, no opportunity provided for

the company to introduce witnesses before the commission, in fact, nothing which has the semblance of due process of law."

In the same case Mr. Justice Miller, writing a concurring opinion, makes entirely clear the propositions which influenced the court. At page 459 of the *Minnesota case* he sums up, most succinctly, the principles which should govern in the examination of railroad rates by the courts, and what he said twenty years ago states with accuracy and precision the position of the Government in the case at bar. Mr. Justice Miller said, first, the legislature may establish rates; second, the power may be exercised through a commission; third, neither the legislature nor the commission can establish rates which are so unreasonable as to destroy the value of property; fourth, there is an ultimate remedy in the courts for rate legislation which deprives the railroads of property without due process of law; and, fifth, the rates so established by the legislature or a commission become the law of the land and must be observed, unless set aside by the courts for the reasons mentioned. Thus the *Minnesota case* supports, rather than opposes, the contention of the Interstate Commerce Commission in the present instance. But if it be argued that it means anything else, or that it upholds the doctrine that the fixing of rates is a judicial and not a legislative function, or that the mere reasonableness of rates fixed by legislative

authority is a matter for court review and adjustment, even though no confiscation of property appear, then the *Minnesota case* is overruled by numerous decisions of this court in more recent cases. *Knoxville* v. *Water Co.* (212 U. S., 8), *Prentis* v. *Atlantic Coast Line* (211 U. S., 210), and others cited hereafter.

It must be further noted that the interstate commerce act differs in all essentials from the Minnesota statute. First, it provides a notice and hearing before any existing rate is disturbed or any new rate is required; second, it expressly provides a method of challenging in the courts the validity of any order of the commission and fixes a venue for the bringing of such suits. Certainly there is no denial here of due process of law. With notice, a hearing, and a full opportunity to present to the commission testimony in support of rates claimed by the railroads to be reasonable, they can not fairly contend that they have been denied the protection of the fifth amendment. It is now too late to insist that due process of law requires always a judicial proceeding. (*Public Clearinghouse* v. *Coyne*, 194 U. S., 497; *Burfenning* v. *C., St. P., M. & O. Ry. Co.*, 163 U. S., 321; *Riverside Oil Co.* v. *Hitchcock*, 190 U. S., 324; *Oceanic Navigation Co.* v. *Stranahan*, 214 U. S., 320.) And finally, with authority in the courts to set aside any order of the commission which fixes rates so low as to constitute a deprivation of property the railroads can not fairly contend that they are denied full and adequate judicial protection.

V.

The fixing of rates is a legislative act; a rate prescribed by the rule of Congress and an order of the commission in conformity therewith becomes the law and can not be set aside by the courts unless it violates constitutional rights.

That the function of making rates for the future, whether by a legislative body in the first instance or by an administrative tribunal in conformity with legislative authority, is a legislative act, is now well established. Under the interstate commerce act, as amended in 1906, rates for interstate transportation are now made by the joint action of Congress and the commission. Congress establishes the rule governing rates and the commission completes the act by declaring what rates will conform to the rule. The rates thus finally ascertained and established become, as Mr. Justice Miller said in the *Minnesota case*, cited above, "the law of the land," with the same force and efficacy as if the very figures in the commission's order were written in the statute.

These principles being once settled, the limits of judicial duty and power become apparent. The rate fixed must stand unless it appears, first, that the commission failed to follow the procedure required by law, or, second, that upon the face of the proceedings the rate required would amount to a confiscation of property. It is a most obvious mistake to assume that the so-called "court review" provided in the Hepburn Act was designed to, or does, give to the federal courts any larger or different

powers to protect the railroads from an invasion of constitutional rights than such courts would have possessed without any declaration on the subject. The "court review" amendment merely confirms the jurisdiction of the courts, specifically defines the venue, and authorizes suits against the commission as an agency of the Government. The history of this legislation supports no other conclusion.

A significant fact appears in the amendment of section 16. Under the old act of 1889, where proceedings were authorized to enforce by injunction, mandamus or otherwise, an order of the commission, the statute read "If it be made to appear to such court on such hearing * * * that the *lawful* order * * * of said commission * * * has been violated or disobeyed," etc. As the amendment of 1906 passed the House of Representatives this provision was changed to read that "If, upon such hearing as the court may determine to be necessary, it appears that the order was regularly passed and duly served," etc. When the bill passed the Senate the word "regularly" was stricken out and the word "lawfully" inserted. The bill went to conference, and ultimately the Senate receded from its amendment, known as Amendment No. 39, and the conferees inserted instead of the word "lawfully" the word "regularly," and in this form the bill was enacted.

It thus appears that a suit to set aside an order of the commission is not a mere appeal from an inferior to a superior tribunal. There is no authority for the substitution of the court's judgment for the

commission's judgment in ascertaining the reasonableness of a rate. The only thing before the court, if the commission proceeded regularly under the statute, is the result reached. If that result shows clearly an attempt to destroy the property rights of the railroads the order of the commission will be set aside; otherwise it will not. The courts can not inquire into the steps by which the result was reached, nor consider the methods which induced the fixing of the rate. They have the same, and no greater, power to review the reasons which controlled the commission as they would those of Congress, if the rate had been fixed by Congress. They have the same, and no greater, power to revise or modify rates made by the commission as they would if such rates had been made by Congress. Their province is, we submit, first, to ascertain whether or not the commission has proceeded regularly, and, if it has, then to take the rates fixed, measure them by the facts found by the commission, or otherwise appearing in the record, and if such rates are clearly so low as to constitute the taking of private property without compensation, then to enjoin the enforcement of the commission's order.

These propositions are fully sustained by many decisions of this court, some of which are among those most recently announced. In *Knoxville* v. *Water Co.* (212 U. S., 1, 8, 18) Mr. Justice Moody says:

> * * * the function of rate making is purely legislative in its character, and this is

true, whether it is exercised directly by the legislature itself or by some subordinate or administrative body, to whom the power of fixing rates in detail has been delegated. The completed act derives its authority from the legislature and must be regarded as an exercise of the legislative power. * * * There can be at this day no doubt, on the one hand, that the courts on constitutional grounds may exercise the power of refusing to enforce legislation, nor, on the other hand, that that power ought to be exercised only in the clearest cases.

* * * * *

The courts, in clear cases, ought not to hesitate to arrest the operation of a confiscatory law, but they ought to refrain from interfering in cases of any other kind.

In *Prentis* v. *Atlantic Coast Line Co.* (211 U. S., 210) it was held that the making of a railroad rate is a legislative and not a judicial act. Mr. Justice Holmes says, at page 226:

But we think it equally plain that the proceedings drawn in question here are legislative in their nature, and none the less so that they have taken place with a body which at another moment, or in its principal or dominant aspect, is a court such as is meant by section 720. A judicial inquiry investigates, declares and enforces liabilities as they stand on present or past facts and under laws supposed already to exist. That is its purpose and end. Legislation on the other hand looks to the future and changes existing conditions by making a new rule to be applied thereafter to all or some

part of those subject to its power. The establishment of a rate is the making of a rule for the future, and therefore is an act legislative and not judicial in kind.

And on page 227:

The nature of the final act determines the nature of the previous inqury. * * * So when the final act is legislative, the decision which induces it can not be judicial in the practical sense, although the questions considered might be the same that would arise in the trial of a case. If a state constitution should provide for a hearing before any law should be passed, and should declare that it should be a judicial proceeding in rem and the decision binding upon all the world, it hardly is to be supposed that the simple device could make the constitutionality of the law res adjudicata, if it subsequently should be drawn in question before a court of the United States. And all that we have said would be equally true if an appeal had been taken to the Supreme Court of Appeals and it had confirmed the rate. Its action in doing so would not have been judicial, although the questions debated by it might have been the same that might come before it as a court, and would have been discussed and passed upon by it in the same way that it would deal with them if they arose afterwards in a case properly so called.

In *Willcox* v. *Consolidated Gas Co.* (212 U. S., 19, 41) Mr. Justice Peckham said:

The question arising is as to the validity of the acts limiting the rates for gas to the prices

therein stated. The rule by which to determine the question is pretty well established in this court. The rates must be plainly unreasonable to the extent that their enforcement would be equivalent to the taking of property for public use without such compensation as under the circumstances is just both to the owner and the public. There must be a fair return upon the reasonable value of the property at the time it is being used for the public. (*San Diego Land & Town Company* v. *National City*, 174 U. S., 739, 757; *Same* v. *Jasper*, 189 U. S., 439, 442.)

Many of the cases are cited in *Knoxville* v. *Water Co.*, just decided, ante, p. 1. The case must be a clear one before the courts ought to be asked to interfere with state legislation upon the subject of rates, especially before there has been any actual experience of the practical result of such rates.

In *San Diego Land Co.* v. *National City* (174 U. S., 739) Mr. Justice Harlan, discussing the limitations of judicial power in cases brought to test the validity of public service rates fixed by legislative authority, says:

> * * * judicial interference should never occur unless the case presents, clearly and beyond all doubt, such a flagrant attack upon the rights of property under the guise of regulations as to compel the court to say that the rates prescribed will necessarily have the effect to deny just compensation for private property taken for the public use.

Judge Noyes says in his book on American Railroad Rates (pp. 203, 204):

> The legislature can not confer upon the courts power to make future rates; nor can it confer what is equivalent—power to revise rates made by a commission and to modify its findings. If the courts could exercise the same discretion in reviewing a rate as the commission exercised in making it, the functions of both would be the same—and both would be legislative. A statute imposing any such non-judicial duties upon the courts would be unconstitutional. The functions of the judicial department are separate and distinct from the other two. They can not be commingled. Neither directly nor indirectly can the courts be required to perform duties properly belonging to another department of the government.

Mr. Justice Brewer said in the *Reagan* case (154 U. S., 397):

> The courts are not authorized to revise or change the body of rates imposed by a legislature or a commission; they do not determine whether one rate is preferable to another, or what under all circumstances would be fair and reasonable as between the carriers and the shippers; they do not engage in any mere administrative work; but still there can be no doubt of their power and duty to inquire whether a body of rates prescribed by a legislature or a commission is unjust and unreasonable, and such as to work a practical destruction to rights of property, and if found so to be, to restrain its operation.

In *Steenerson* v. *Great Northern Railway Company* (69 Minn., 353) the state court was considering a statute which provided for a court review after a rate had been fixed by the state commission on complaint and hearing. The statute declared that there should be an appeal from the commission to the district court, and "upon such appeal * * * the district court shall have jurisdiction to and it shall examine the whole matter in controversy, including matters of fact as well as questions of law and to *affirm, modify, and reverse* such order in whole or in part as justice may require; and in case of any order being modified as aforesaid such modified order shall for all the purposes contemplated by this act stand in place of the original order so modified * * *."

In regard to this provision the court said, pages 375–376:

> If by this the legislature intended to provide that the court should put itself in the place of the commission, try the matter de novo, and determine what are reasonable rates without regard to the findings of the commission, such intent can not be carried out, as a statute which so provided would be unconstitutional. The fixing of rates is a legislative or administrative act, not a judicial one. (*State* v. *Chicago*, 38 Minn., 281, 298; 37 N. W., 782.) And the performance of such duties can not, under our Constitution, be imposed on the judiciary. (*Foreman* v. *Board*, 64 Minn., 371; 67 N. W., 207; *State* v. *Young*, 29 Minn., 474; 9 N. W., 737; *Reagan* v. *Farmers*, 154 U. S., 362; 14 Sup. Ct., 1047.)

> But it is not necessary to construe this statute so as to render it unconstitutional. It does not by express words, or even by necessary implication, provide that the court shall stand in the shoes of the commission and try the matter de novo.
>
> * * * * *
>
> The district court may review the findings of the commission only so far as to determine whether or not the rates fixed are so unreasonable as to be confiscatory, just as an appellate court reviews the verdict of a jury for the purpose of determining whether it is so excessive that it cannot stand.
>
> Of course, in determining whether the rates fixed are confiscatory, the court must incidentally consider what are reasonable rates, but it must also resolve every reasonable doubt on that question in favor of the findings of the commission.

The Hepburn Act is free from the fault criticised by the court in the statute referred to above. In speaking of the function of the courts it uses the words "suspend," "set aside," "enjoin" or "annul" an order of the commission; not once do the words "affirm," "modify" or "reverse" appear. Section 15 says:

> All orders of the commission, except orders for the payment of money, shall take effect within such reasonable time, not less than thirty days, and shall continue in force for such period of time, not exceeding two years, as shall be prescribed in the order of

> the commission, unless the same shall be suspended or modified or set aside by the commission or be *suspended or set aside by a court of competent jurisdiction.*

Section 16 provides:

> The venue of suits brought in any of the circuit courts of the United States against the commission to *enjoin, set aside, annul,* or *suspend* any order or requirement of the commission shall be in the district where the carrier, against whom such order or requirement may have been made, has its principal operating office * * * .

This section also declares:

> That no injunction, interlocutory order, or decree *suspending* or *restraining* the enforcement of an order of the commission shall be granted except on hearing after not less than five days' notice to the commission.

These cases upon the general proposition, and these specific provisions of the interstate commerce act as now in force, make full answer to any claim that the work of the commission, the process by which its conclusions were reached, or the mere reasonableness of a rate fixed within constitutional limits are subject to judicial review. Just as Congress can not commit errors of law which are subject to review and reversal by the judicial branch of the Government, so the commission's action in prescribing rates in conformity with the standard required by Congress is not subject to review by the courts as to errors in considering certain facts, refusing to consider other

facts, pursuing a method which the court would not have pursued, or, finally, fixing a rate which is lower than the court would have fixed.

Thus, in the case at bar, it is absolutely immaterial whether the commission was influenced by the evidence before it that the fir lumber industry in the Willamette Valley had been built up on the faith that the original rates established by the railroads would be maintained. The only question is: Do the pleadings or record show that the rates fixed by the commission, to wit, $3.40 and $3.65, are clearly and beyond all doubt so low that their enforcement will necessarily amount to a confiscation of property?

VI.

The demurrer of the commission should be sustained because the bill of complaint does not state any facts from which the court can determine upon the face of the bill that the rates fixed by the commission are unreasonably low or confiscatory.

The bill was drawn upon the theory that the court would take the testimony before the commission and such additional testimony as the carriers presented for the first time in the circuit court, and upon all the testimony arrive at an opinion as to whether the $5 rate was unjust and unreasonable; that it would approach the decision of this question in the same manner as the commission; and that if the court found the $5 rate not to be unreasonable, it would enjoin the order of the commission.

The bill is defective even if the theory of the pleader were correct, because it merely states the conclusions on the part of the pleader that the rates fixed by the commission are unreasonably low, without setting forth any definite facts from which this court can conclude that the action of the commission will operate to confiscate the property of the railroads. The following quotations from the complaint contain all the allegations asserting that the action of the commission is unlawful on the ground that the rates fixed by it are unreasonably low or confiscatory:

> Your orator avers that the present rates of $5 per ton, attempted to be set aside by said order, * * * are and will be for more than three years hence, low, just and reasonable rates for the service performed in the transportation of said commodities between said places and each of them, and that the rates prescribed by the commission in and by its said order, namely, a rate not exceeding $3.40 per ton, * * * and a rate not exceeding $3.65 per ton, * * * are, * * * and will be for more than three years hence, unjust and unreasonable for the service performed in the transportation of rough green fir lumber and lath in carloads and are and will be inadequate compensation to your orators for the service rendered (Rec. p. 38).

The commission's only power under the act is to fix a rate as a maximum for the future which shall be a just and reasonable rate for the particular service rendered. In reducing the rate in this case to an amount less than this

and which is not a fair return for the service rendered the commission mistook the law and misinterpreted their powers (Rec., p. 40, par. 6).

Your orators aver that the rates of $3.40 and $3.65 per ton, as ordered and prescribed by said commission, were and are unreasonably low rates and will so continue to be during the period fixed for the application of the same by the said commission, and are less than what is and will be during said period just and reasonable for the service rendered, and the said rates do not and will not during said period pay the cost of the service rendered; and that the rate of $5 per ton was, is and will be for the period fixed by said commission no greater than a just and reasonable rate for the service rendered in the transportation of rough green fir lumber and lath from points in the Willamette Valley to San Francisco, Cal., and bay points * * * (Rec., p. 45, par. 9).

The evidence introduced on the trial of the cause before the commission showed that the former rate of $3.10 was an exceedingly low rate; that the rate of $5 is in and of itself a reasonable rate for the service performed, and nothing appeared to the contrary. Wherefore your orators charge that upon the undisputed facts it was the duty of the commission not to reduce the rate of $5, and especially that they had no power to reduce the rate to the amounts at which they fixed them as maximum to be charged, when such amounts were conceded and shown to be unreasonably low (Rec., p. 46, par. 9).

> Your orators aver that for some time before it was changed the rate of three dollars and ten cents ($3.10) was not a remunerative rate. They aver and charge that the rates established by the commission will prove unremunerative (Rec., p. 48).

It is apparent that the effect of these allegations is merely to state the conclusions on the part of the pleader that the new rates are "unjust," "unreasonable," "inadequate compensation for the services rendered," "less than reasonable rates and not a fair return for the service rendered," "unreasonably low rates," "such that they will not pay the cost of the service rendered," "unremunerative." No specification of facts is set out in the bill to show wherein the rates fixed by the commission are unreasonably low or confiscatory. The bill does not state the cost of transportation of lumber or the cost of the carriage of a ton of lumber in carload lots from points in the Willamette Valley to San Francisco, or the gross receipts of complainants, or the net profits or loss, or the gross expenses, or any other facts from which this court can determine that the commission acted unconstitutionally and in violation of the fifth amendment. There is an entire absence of such definite allegations as were set out by the complainants in the *Reagan* and *Smyth* v. *Ames* cases.

VII.

Confiscation can not be predicated on particular rates unless the carrier properly plead and show that the rates fixed will result in denying a fair return upon the operation of the road.

The order of the commission under consideration applied only to rates on rough, green fir lumber from points in the Willamette Valley to San Francisco and bay points. Commodities other than lumber were unaffected by the order; nor did the order affect rates on any other lumber than fir, or even fir lumber other than rough green fir lumber. It affected only the cheapest grade of lumber cut from the cheapest kind of timber and only when sent to California. As there is no contention that the complainants do not receive from their entire business an adequate compensation upon the value of the property used for the public we insist that this court should not make any inquiry into the sufficiency of the rates fixed by the commission. Moreover, the commission found that the old rate of $3.10, which was 30 and 55 cents less than the two rates fixed by the commission, had more than paid the cost of operation. (Rec., p. 22.)

In the case of *Minneapolis & St. Louis Railroad Company* v. *Minnesota* (186 U. S., 257), the Supreme Court upheld a rate fixed by a state commission on coal in carload lots, although it was clear that if all tariff rates had been adjusted according to the rate ordered for the coal the railroads would not have received a fair return on the value of the property

used for the public. The state commission of Minnesota, after a hearing pursuant to statute, had lowered a joint rate for the carriage of coal in carload lots on two connecting railroads within the State. When the roads refused to comply, the state commission filed a petition for mandamus in the state court. The judgment of the lower court was sustained by the Supreme Court of Minnesota (80 Minn., 191), which decision the Supreme Court of the United States affirmed.

Mr. Justice Brown said (p. 267):

> Notwithstanding the evidence of the defendant that, if the rates upon *all* merchandise were fixed at the amount imposed by the commission upon coal in carload lots the road would not pay its operating expenses, it may well be that the existing rates upon other merchandise, which are not disturbed by the commission, may be sufficient to earn a large profit to the company, though it may earn little or nothing upon coal in carload lots. In *Smyth* v. *Ames*, (169 U. S., 466), we expressed the opinion (p. 541) that the reasonableness or unreasonableness of rates prescribed by a State for the transportation of persons or property wholly within its limits, must be determined without reference to the interstate business done by the carrier, or the profits derived from it, but it by no means follows that the companies are entitled to earn the same percentage of profits upon all classes of freight carried. It often happens that, to meet competition from other roads at particu-

lar points, the companies themselves fix a disproportionately low rate upon certain classes of freight consigned to these points. The right to permit this to be done is expressly reserved to the Interstate Commerce Commission by section 4 of that act, notwithstanding the general provisions of the long and short haul clause, and has repeatedly been sanctioned by decisions of this court. While we never have decided that the commission may compel such reductions, we do not think it beyond the power of the state commission to reduce the freight upon a particular article, provided the companies are able to earn a fair profit upon their entire business, and that the burden is upon them to impeach the action of the commission in this particular. * * *

In exercising its power of supervising such rates the commission is not bound to reduce the rates upon *all* classes of freight, which may perhaps be reasonable, except as applied to a particular article; and if, upon examining the tariffs of a certain road, the commission is of opinion that the rate upon a particular article, or class of freight, is disproportionately or unreasonably high, it may reduce such rate, notwithstanding that it may be impossible for the company to determine with mathematical accuracy the cost of transportation of that particular article as distinguished from all others. Obviously such a reduction could not be shown to be unreasonable simply by proving that, if applied to all classes of freight, it would result in an unreasonably low rate. It sometimes happens

that, for purposes of ultimate profit and of building up a future trade, railways carry both freight and passengers at a positive loss; and while it may not be within the power of the commission to compel such a tariff, it would not upon the other hand be claimed that the railroads could in all cases be allowed to charge grossly exorbitant rates as compared with rates paid upon other roads, in order to pay dividends to stockholders. Each case must be determined by its own considerations, and while the rule stated in *Smyth* v. *Ames* is undoubtedly sound as a general proposition that the railways are entitled to a fair return upon the capital invested, it might not justify them in charging an exorbitant mileage in order to pay operating expenses, if the conditions of the country did not permit it.

It is sufficient, however, for the purpose of this case to say that the action of the commission in fixing the rate complained of as to this particular class of freight has not been shown to be so unjust or unreasonable as to amount to a taking of property without due process of law, and we therefore conclude that the judgment of the Supreme Court must be affirmed.

The rule laid down by this court in the case of *Atlantic Coast Line R. R.* v. *North Carolina Corporation Commission* (206 U. S., 1) is applicable. There the North Carolina Corporation Commission, after a complaint and full investigation, ordered the Atlantic Coast Line Railroad to put on an additional passenger train at a daily cost of operation of $40, with probable daily receipts of $25. It was urged that the order of

the commission was repugnant to the "due process" and "equal protection" clauses of the fourteenth amendment to the Constitution.

But Mr. Justice White said:

> It follows, therefore, that the mere incurring of a loss from the performance of such a duty does not in and of itself necessarily give rise to the conclusion of unreasonableness, as would be the case where the whole scheme of rates was unreasonable under the doctrine of *Smyth* v. *Ames* or under the concessions made in the two propositions we have stated. Of course, the fact that the furnishing of a necessary facility ordered may occasion an incidental pecuniary loss is an important criteria to be taken into view in determining the reasonableness of the order, but it is not the only one. As the duty to furnish necessary facilities is coterminous with the powers of the corporation, the obligation to discharge that duty must be considered in connection with the nature and productiveness of the corporate business as a whole, the character of the service required, and the public need for its performance.

In the case of *St. Louis & San Francisco Ry. Co.* v. *Gill* (156 U. S., 649) this court held that it was not warranted in declaring invalid an act of the legislature of Arkansas, where it did not appear that the entire body of rates returned an insufficient revenue. We quote from that opinion, at page 665:

> It therefore appears that the allegations made and the evidences offered did not cover

the company's railroad as an entirety, even in the State of Arkansas, but were made in reference to that portion of the road originally belonging to the St. Louis, Arkansas and Texas Railway and extending from the northern boundary of Arkansas to Fayetteville, in said State. In this state of facts we agree with the views of the Supreme Court of Arkansas, as disclosed in the opinion contained in the record, and which were to the effect that the correct test was as to the effect of the act on the defendant's entire line, and not upon that part which was formerly a part of one of the consolidating roads; that the company can not claim the right to earn a net profit from every mile, section, or other part into which the road might be divided, nor attack as unjust a regulation which fixed a rate at which some such part would be unremunerative; that it would be practically impossible to ascertain in what proportion the several parts should share with others in the expenses and receipts in which they participated; and, finally, that to the extent that the question of injustice is to be determined by the effects of the act upon the earnings of the company, the earnings of the entire line must be estimated as against all its legitimate expenses under the operation of the act within the limits of the State of Arkansas.

The cases cited applied to particular rates not one of which paid the cost of the service rendered for the rate considered. The case at bar is even stronger, for

here the commission found that the $3.10 rate, which was lower than the rates ordered by the commission, had yielded and would continue to yield a substantial return over and above the cost of operation.

The Commission says (Rec., p. 22):

> The $3.10 rate was certainly a low one; but we are satisfied that it did yield when established, has ever since yielded, and would for the future yield, a substantial return over and above the cost of operation, and that its maintenance in the past has contributed much to the prosperity of the defendants.

And on page 24:

> The expense of handling traffic under this rate is not greater than the revenue, thereby occasioning a loss which must be made up on other business. Such a rate would present an entirely different question from that before us. Here the business is remunerative directly, besides being highly beneficial to the defendants indirectly.

There is an allegation in the bill that the commission did not find the rate of $5 per ton to be unreasonable, but found the rate of $5 to be reasonable in and of itself, and that the commission reached its conclusion because of matters extraneous to the question of the reasonableness of the rate. The complete answer is the opinion of the commission itself, which is made a part of the amended bill. A demurrer to a bill does not admit the allegations of the bill as to the meaning of a paper attached thereto. (*Dillon* v. *Barnard*, 21 Wall., 430, 437.)

The Commissioner says (Rec., p. 26):

> We are of the opinion, then, that the present rate of $5 from all mills in the Willamette Valley, not including Portland, is unjust and unreasonable; that for the future from mills upon the east bank, and upon the west bank south of Corvallis, that rate should not exceed 17 cents per 100 pounds, or $3.40 per ton, upon rough, green fir lumber and lath, and that from points upon the west bank north of Corvallis it should not exceed $3.65 per ton.

VIII.

The penalties provided for in section 16 of the act are not so unreasonable and excessive as to render that section of the act unconstitutional; but if the penalties are in conflict with the Constitution, the penalty clause is separable from the other portions of the act.

In Paragraph V of the amended bill it is alleged that section 16 of the act is unconstitutional and void, in that it is therein provided that carriers knowingly failing or neglecting to obey the order of the commission shall forfeit the sum of $5,000 for each day they continue in disobedience of said order, and that it thereby deprives complainants of their property without due process of law, contrary to the fifth amendment of the Constitution.

A similar contention was made in the *Commodities Clause Cases* (213 U. S., 366), but Mr. Justice White said (p. 417):

> With reference to the contention that the commodities clause is void because of the nature and character of the penalties which it

imposes for violations of its provisions, within the ruling in *Ex parte Young* (209 U. S., 123), we think it also suffices to say that even if the delay which the clause provided should elapse between its enactment and the going into effect of the same does not absolutely exclude the clause from the ruling in *Ex parte Young*, a question which we do not feel called upon to decide, nevertheless the proposition is without merit, because, (a) no penalties are sought to be recovered in these cases, and (b) the question of the constitutionality of the clause relating to penalties is wholly separable from the remainder of the clause, and, therefore, may be left to be determined should an effort to enforce such penalties be made.

The provision as to penalty for failure to obey the order of the commission is entirely separable from the statute, which is moreover effective without this provision, because it provides for a suit at the instance of the commission to compel obedience to the order by the carrier against whom it is directed. Consequently the penalty provision has no effect upon the validity of the remaining portions of the statute and may be excluded from consideration in this case.

As to every order of the Interstate Commerce Commission the carrier can apply to the circuit court for an injunction in advance of the effective date of the order and, if the injunction is granted, penalties do not accrue. The penalty for failure to comply with an order of the commission only attaches in case the order is lawful. It therefore

follows that the penalty provision of the statute for failure to obey an order of the commission is not unnecessarily severe.

CONCLUSION.

In submitting this case it is respectfully suggested that every intendment of law and fact should avail to support the order of the commission. The matter of these lumber rates has been thoroughly examined. The commission has found and stated as facts, which are a part of this record, that the rate of $3.40 per ton for the transportation of rough green fir lumber and lath in carloads, from certain points on the Willamette River, and the rate of $3.65 per ton from certain other points, to San Francisco and bay points, do now and will for the future yield a substantial profit to the railroads; that such rates are just and reasonable, and that the rate of $5 per ton for such transportation was unjust and unreasonable.

The railroads contend that neither Congress, the commission, nor any other authority, except the courts, has any power to disturb their rates; but if such power does exist in the commission then they say that the rates fixed by the commission are unjust and unreasonable, and will not pay the cost of operation. Thus, in the last analysis the case turns upon this point: The railroads say that the rates fixed by the commission will not remunerate them for the service; the commission has examined the question, heard the testimony, considered the claims of shippers and carriers and all the conditions

surrounding the subject, and has found that the rates prescribed by it will remunerate them for the service.

Will this court go into the question? Will it not accept the conclusions of fact reached by the commission? And if it be said that the railroads have alleged in their bill of complaint that the rates fixed by the commission are below the cost of the service, or deprive them of property without due process of law, and the commission has demurred to the bill, are not the *findings of the commission to the very contrary of these allegations*, a part of the pleadings, attached to the bill? Even if the bill and demurrer stand alone, with nothing else before the court, is the allegation that a rate fixed by the commission is below the cost of service, or is a deprivation of property, the pleading of any fact which would justify a court in setting aside the order? If the constitutional validity of the rate is submitted to the court, these are the very questions the court must answer. Therefore, the railroads must plead some facts concerning the cost of the transportation involved, or the elements which make up this cost, or some facts showing the relation of these rates to the general earnings of the roads, in order to enable the court to say whether or not the rates fixed by the commission are below the cost of operation, or are so unreasonably low as to invade property rights.

We submit that in a matter involving so many considerations; where the rates complained of are 10

per cent higher than the railroads themselves had maintained for many years; where the cost of transporting a single unit is much lower than it was when these rates were originally adopted by the railroads; where the extraordinary advance would have completely destroyed industries established on the faith of previous rates; and, finally, where after a full inquiry the Interstate Commerce Commission fixes rates which it finds and believes to be just and reasonable, *the judgment of the commission, rather than that of the railroads,* should be accepted.

This court in *Smyth* v. *Ames* (169 U. S., 466, 527), speaking of the considerations to which weight should be given in ascertaining when rates established by law constitute a deprivation of property, used these words:

> Undoubtedly that question could be more easily determined by a commission composed of persons whose special skill, observation and experience qualifies them to so handle great problems of transportation as to do justice both to the public and to those whose money has been used to construct and maintain highways for the convenience and benefit of the people.

Clearly the Interstate Commerce Commission has here shown the most impartial and painstaking consideration of every phase of the subject before it. The conclusions reached are, in the judgment of the commission, equitable and just, and, upon the merits of this case, we submit that the order made should

be upheld and the cause remanded to the Circuit Court with directions to sustain the demurrer and dismiss the amended bill.

Respectfully submitted.

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ACT TO REGULATE COMMERCE AS CHANGED BY THE ACT OF JUNE 29, 1906.

Provisions set parallel contain exactly the same wording.

ACT OF FEBRUARY 4, 1887.	ACT OF JUNE 29, 1906.
[24 STAT., 379.]	[34 STAT., 584.]
[Given in full, as in force prior to June 29, 1906. Rearranged to correspond with order of new law.]	[Given in full and in regular order.]
SEC. 1. That the provisions of this Act shall apply to any	SEC. 1. That the provisions of this Act shall apply to any
	corporation or any person or persons engaged in the transportation of oil or other commodity, except water and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, who shall be considered and held to be common carriers within the meaning and purpose of this Act, and to any
common carrier or carriers engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used, under a common control, management, or arrangement,	common carrier or carriers engaged in the transportation of passengers or property wholly by railroad * (or partly by railroad and partly by water when both are used under a common control, management, or arrangement

* Parentheses in new law only.

for a continuous carriage or shipment, from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia,

for a continuous carriage or shipment), from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia,

or from one place in a Territory to another place in the same Territory,

or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of transshipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country: *Provided, however,* That the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property, wholly within one State, and not

or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of transshipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country: *Provided, however,* That the provisions of this Act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one State and not

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shipped to or from a foreign country from or to any State or Territory as aforesaid.

shipped to or from a foreign country from or to any State or Territory as aforesaid.

The term "common carrier" as used in this Act shall include express companies and sleeping car companies.

The term "railroad" as used in this Act shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease;

The term "railroad" as used in this Act, shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease,

and shall also include all switches, spurs, tracks, and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein, and also all freight depots, yards, and grounds used or necessary in the transportation or delivery of any of said property;

and the term "transportation" shall include

and the term "transportation" shall include

cars and other vehicles and

all instrumentalities

all instrumentalities

and facilities

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of shipment or carriage.

of shipment or carriage,

irrespective of ownership or of any contract, express or implied, for the use thereof and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported; and it shall be the duty of every carrier subject to the provisions of this Act to provide and furnish such transportation upon reasonable request therefor, and to establish through routes and just and reasonable rates applicable thereto.

All charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith,

All charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith,

or for the receiving, delivering, storage, or handling of such property,

shall be reasonable and just and every unjust and unreasonable charge for such service

shall be just[a] and reasonable; and every unjust and unreasonable charge for such service

or any part thereof

[a] "Reasonable and just" reversed in new law.

is prohibited and declared to be unlawful.

[SEC. 22, *as amended March 2, 1889 (25 Stat., 855), and February 8, 1895 (28 Stat., 643). That part of section dealing with free transportation of passengers transposed to this place from p. 82. It is not specifically amended by Act of June 29, 1906, and is still in force, so far as it does not conflict with latter act.*]

That nothing in this Act shall prevent the * * *

or the free carriage

[*Part in brackets transposed from below. See p. 11.*]
[nothing in this Act shall be construed to prevent railroads from giving free carriage to their own officers and employees,]

is prohibited and declared to be unlawful.

No common carrier subject to the provisions of this Act, shall, after January first, nineteen hundred and seven, directly or indirectly, issue or give any interstate

free ticket, free pass, or free transportation for passengers,

except to its employees and their families, its officers, agents, surgeons, physicians, and attorneys at law;

of destitute and homeless persons transported by charitable societies, and the necessary agents employed in such transportation, or the issuance of mileage, excursion, or commutation passenger tickets; nothing in this act shall be construed to prohibit any common carrier from giving reduced rates to ministers of religion, or to municipal governments for the transportation of indigent persons, or

to ministers of religion, traveling secretaries of railroad Young Men's Christian Associations, inmates of hospitals and charitable and eleemosynary institutions, and persons exclusively engaged in charitable and eleemosynary work; to indigent, destitute and homeless persons, and to such persons when transported by charitable societies or hospitals, and the necessary agents employed in such transportation;

to inmates of the National Homes or State Homes for Disabled Volunteer Soldiers and of Soldiers' and Sailors' Orphan Homes, including those about to enter and those returning home after discharge, under arrange-

ments with the boards of managers of said homes; [*Clause from here transposed to p. 9.*]

to inmates of the National Homes or State Homes for Disabled Volunteer Soldiers, and of Soldiers' and Sailors' Homes, including those about to enter and those returning home after discharge and boards of managers of such Homes;

to necessary care takers of live stock, poultry, and fruit; to employees on sleeping cars, express cars, and to linemen of telegraph and telephone companies; to Railway Mail Service employees, post-office inspectors, customs inspectors and immigration inspectors; to newsboys on trains, baggage agents, witnesses attending any legal investigation in which the common carrier is interested, persons injured in wrecks and physicians and nurses attending such person:

or prevent the principal officers of any railroad company or companies from exchanging passes or tickets with other railroad companies for their officers and employees; [*Remainder of section on p. 82.*]

Provided, That this provision shall not be construed to prohibit the interchange of passes for the officers, agents, and employees of common carriers, and their families; nor to prohibit any common carrier from carrying passengers free with the object of providing relief in cases of general epidemic, pestilence, or other calamitous visitation. *Provided further*, That the term "employees" as used in this paragraph shall include furloughed, pensioned, and superannuated employees, persons who have become disabled or infirm in the service of any such common carrier, and the remains of a person killed in the employment of a carrier and ex-employees traveling for the purpose of entering the service of any such common carrier; and the term "families" as used in this paragraph shall include the families of those persons named in this proviso, also the families of persons killed while in the service of any such common carrier. Any common carrier violating this provision shall be deemed guilty of a misdemeanor and for each offense, on conviction, shall pay to

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the United States a penalty of not less than one hundred dollars nor more than two thousand dollars, and any person, other than the persons excepted in this provision, who uses any such interstate free ticket, free pass, or free transportation, shall be subject to a like penalty. Jurisdiction of offenses under this provision shall be the same as that provided for offenses in an Act entitled "An Act to further regulate commerce with foreign nations and among the States," approved February nineteenth, nineteen hundred and three, and any amendment thereof.

From and after May first, nineteen hundred and eight, it shall be unlawful for any railroad company to transport from any State, Territory, or the District of Columbia, to any other State, Territory, or the District of Columbia, or to any foreign country, any article or commodity, other than timber and the manufactured products thereof, manufactured, mined, or produced by it, or under its authority, or which it may own in whole, or in part, or in which it may have any

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interest direct or indirect except such articles or commodities as may be necessary and intended for its use in the conduct of its business as a common carrier.

Any common carrier subject to the provisions of this Act, upon application of any lateral, branch line of railroad, or of any shipper tendering interstate traffic for transportation, shall construct, maintain, and operate upon reasonable terms a switch connection with any such lateral, branch line of railroad, or private side track which may be constructed to connect with its railroad, where such connection is reasonably practicable and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of the same; and shall furnish cars for the movement of such traffic to the best of its ability without discrimination in favor of or against any such shipper. If any common carrier shall fail to install and operate any such switch or connection as aforesaid, on application therefor in writing by any shipper, such shipper may make complaint to the Com-

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mission, as provided in section thirteen of this Act, and the Commission shall hear and investigate the same and shall determine as to the safety and practicability thereof and justification and reasonable compensation therefor and the Commission may make an order, as provided in section fifteen of this Act, directing the common carrier to comply with the provisions of this section in accordance with such order, and such order shall be enforced as hereinafter provided for the enforcement of all other orders by the Commission, other than orders for the payment of money.

SEC. 2. That if any common carrier subject to the provisions of this Act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this Act, than it charges, demands, collects, or receives from any other person or persons for doing for

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him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful.

[*Unchanged.*]

SEC. 3. That it shall be unlawful for any common carrier subject to the provisions of this Act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Every common carrier subject to the provisions of this Act shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers and

property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines; but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business.

SEC. 4. That it shall be unlawful for any common carrier subject to the provisions of this Act to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance; but this shall not be construed as authorizing any common carrier within the terms of this act to charge and receive as great compensation for a shorter as for a longer distance: *Provided, however*, That upon application to the Commission appointed under the provisions of this Act, such common car-

[*Unchanged.*]

rier may, in special cases, after investigation by the Commission, be authorized to charge less for longer than for shorter distances for the transportation of passengers or property; and the Commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section of this Act.

SEC. 5. That it shall be unlawful for any common carrier subject to the provisions of this Act to enter into any contract, agreement, or combination with any other common carrier or carriers for the pooling of freights of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof; and in any case of an agreement for the pooling of freights as aforesaid, each day of its continuance shall be deemed a separate offense.

[*Unchanged.*]

SEC. 6 [*as amended March 2, 1889, (25 Stat., 855)*].

That every common carrier subject to the provisions of this Act shall

SEC. 6.

That every common carrier subject to the provisions of this Act shall

file with the Commission created by this Act and

print and keep open to public inspection schedules showing

the rates and fares and charges for the

transportation

of passengers and property which any such common carrier has established and which are in force at the time upon its route.

The schedules printed as aforesaid by any such common carrier shall plainly state the places

upon its railroad

print and keep open to public inspection schedules showing

all

the rates, fares, and charges for

transportation

between different points on its own route and between points on its own route and points on the route of any other carrier by railroad, by pipe line, or by water when a through route and joint rate have been established. If no joint rate over the through route has been established, the several carriers in such through route shall file, print and keep open to public inspection as aforesaid, the separately established rates, fares and charges applied to the through transportation.

The schedules printed as aforesaid by any such common carrier shall plainly state the places

between which property and passengers will be carried, and shall contain the classification of freight in force, and shall also state separately

between which property and passengers will be carried, and shall contain the classification of freight in force, and shall also state separately

the

all

terminal charges

terminal charges,

storage charges, icing charges, and all other charges which the Commission may require, all privileges or facilities granted or allowed

and any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates

and any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates,

and

fares and charges.

fares, and charges,

or the value of the service rendered to the passenger, shipper, or consignee.

Such schedule shall be plainly printed in large type, and copies for the use of the public shall be

Such schedule shall be plainly printed in large type, and copies for the use of the public shall be

kept

posted in two public and conspicuous places, in every depot, station, or office of such carrier where passengers or freight, respectively, are re-

posted in two public and conspicuous places in every depot, station, or office of such carrier where passengers or freight, respectively, are re-

ceived for transportation, in such form that they shall be accessible to the public and can be conveniently inspected

Any common carrier subject to the provisions of this Act receiving freight in the United States to be carried through a foreign country to any place in the United States shall also in like manner print and keep open to public inspection, at every depot or office where such freight is received for shipment, schedules showing the through rates established and charged by such common carrier to all points in the United States beyond the foreign country to which it accepts freight for shipment; and any freight shipped from the United States through a foreign country into the United States, the through rate on which shall not have been made public as required by this Act, shall, before it is admitted into the United States from said foreign country, be subject to customs duties as if said freight were of foreign production;

ceived for transportation, in such form that they shall be accessible to the public and can be conveniently inspected

The provisions of this section shall apply to all traffic, transportation, and facilities defined in this Act.

Any common carrier subject to the provisions of this Act receiving freight in the United States to be carried through a foreign country to any place in the United States shall also in like manner print and keep open to public inspection, at every depot or office where such freight is received for shipment, schedules showing the through rates established and charged by such common carrier to all points in the United States beyond the foreign country to which it accepts freight for shipment; and any freight shipped from the United States through a foreign country into the United States the through rate on which shall not have been made public, as required by this Act, shall, before it is admitted into the United States from said foreign country, be subject to customs duties as if said freight were of foreign production.

and any law in conflict with this section is hereby repealed.

No advance	No change
shall be made in the rates, fares, and charges	shall be made in the rates, fares, and charges
	or joint rates, fares, and charges
which have been	which have been
established	
	filed
and published	and published
as aforesaid	
by any common carrier in compliance with the requirements of this section, except after	by any common carrier in compliance with the requirements of this section, except after
ten days'	
	thirty days'
public notice,	
	notice to the Commission and to the public published as aforesaid,
which shall plainly state the changes proposed to be made in the schedule then in force, and the time when the	which shall plainly state the changes proposed to be made in the schedule then in force and the time when the
increased rates,	
	changed rates,

fares, or charges will go into effect; and the proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection.

Reductions in such published rates, fares, or charges shall only be made after three days' previous public notice, to be given in the same manner that notice of an advance in rates must be given.

[*Sentence transposed to p. 29, for purpose of comparison with new law.*]

fares, or charges will go into effect; and the proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection:

Provided, That the Commission may, in its discretion and for good cause shown, allow changes upon less than the notice herein specified, or modify the requirements of this section in respect to publishing, posting, and filing of tariffs, either in particular instances or by a general order applicable to special or peculiar circumstances or conditions.

The names of the several carriers which are parties to any joint tariff shall be specified therein, and each of the parties thereto, other than the one filing the same, shall

file with the Commission such evidence of concurrence therein or acceptance thereof as may be required or approved by the Commission, and where such evidence of concurrence or acceptance is filed it shall not be necessary for the carriers filing the same to also file copies of the tariffs in which they are named as parties.

Every common carrier subject to the provisions of this Act shall file with the Commission hereinafter provided for copies of its schedules of rates, fares, and charges which have been established and published in compliance with the requirements of this section, and shall promptly notify said Commission of all changes made in the same.

[*Covered in first sentence of new section 6. See p. 18.*]

Every

such

common carrier

shall also file with said Commission copies of all contracts, agreements, or arrangements with other common carriers in relation to any traffic affected by the provisions of this Act to which it may be a party.

Every

common carrier

subject to this Act

shall also file with said Commission copies of all contracts, agreements, or arrangements with other common carriers in relation to any traffic affected by the provisions of this Act to which it may be a party.

And in cases where passengers and freight pass over continuous lines or routes operated by more than one common carrier, and the several common carriers operating such lines or routes establish joint tariffs of rates or fares or charges for such continuous lines or routes, copies of such joint tariffs shall also, in like manner, be filed with said Commission. Such joint rates, fares, and charges on such continuous lines so filed as aforesaid shall be made public by such common carriers when directed by said Commission, in so far as may, in the judgment of the Commission, be deemed practicable; and said Commission shall from time to time prescribe the measure of publicity which shall be given to such rates, fares, and charges, or to such part of them as it may deem it practicable for such common carriers to publish, and the places in which they shall be published.

No advance shall be made in joint rates, fares, and charges, shown upon joint tariffs, except after ten days' notice to the Commission, which shall plainly state the

changes proposed to be made in the schedule then in force, and the time when the increased rates, fares, or charges will go into effect. No reduction shall be made in joint rates, fares, and charges, except after three days' notice, to be given to the Commission as is above provided in the case of an advance of joint rates. The Commission may make public such proposed advances, or such reductions, in such manner as may, in its judgment, be deemed practicable, and may prescribe from time to time the measure of publicity which common carriers shall give to advances or reductions in joint tariffs.

It shall be unlawful for any common carrier, party to any joint tariff, to charge, demand, collect, or receive from any person or persons a greater or less compensation for the transportation of persons or property, or for any services in connection therewith, between any points as to which a joint rate, fare, or charge is named thereon than is specified in the schedule filed with the Commission in force at the time.

The Commission may determine and prescribe the form in which the schedules required by this section to be kept open to public inspection shall be prepared and arranged, and may change the form from time to time as shall be found expedient.

If any such common carrier shall neglect or refuse to file or publish its schedules or tariffs of rates, fares, and charges as provided in this section, or any part of the same, such common carrier shall, in addition to other penalties herein prescribed, be subject to a writ of mandamus, to be issued by any circuit court of the United States in the judicial district wherein the principal office of said common carrier is situated, or wherein such offense may be committed, and if such common carrier be a foreign corporation in the judicial circuit wherein such common carrier accepts traffic and has an agent to perform such service, to compel compliance with the aforesaid provisions of this section; and such writ shall issue in the name of the people of the United States, at the relation of the Commissioners appointed under

The Commission may determine and prescribe the form in which the schedules required by this section to be kept open to public inspection shall be prepared and arranged, and may change the form from time to time as shall be found expedient.

[*Mandamus to compel compliance generally, in new law, p. 79.*]

the provisions of this Act; and the failure to comply with its requirements shall be punishable as and for a contempt; and the said Commissioners, as complainants, may also apply, in any such circuit court of the United States, for a writ of injunction against such common carrier, to restrain such common carrier from receiving or transporting property among the several States and Territories of the United States, or between the United States and adjacent foreign countries, or between ports of transshipment and of entry and the several States and Territories of the United States, as mentioned in the first section of this Act, until such common carrier shall have complied with the aforesaid provisions of this section of this Act.

No carrier, unless otherwise provided by this Act, shall engage or participate in the transportation of passengers or property, as defined in this Act, unless the rates, fares, and charges upon which the same are transported by said carrier have been filed and published in accordance with the provisions of this Act; nor shall any

[*Sentence below in brackets transferred from p. 23.*]
[And when any such common carrier shall have established and published its rates, fares, and charges in compliance with the provisions of this section, it shall be unlawful

for such common

carrier	carrier
to	
charge,	charge
	or
demand,	demand
	or
collect,	collect
or receive	or receive
from any person or persons	
a greater or less	a greater or less
	or different
compensation for	compensation for
the	
	such
transportation of passengers or property, or for any	transportation of passengers or property, or for any
services	
	service

in connection therewith,

than is

specified in

such published schedule of rates, fares, and charges as may at the time be in force.]

in connection therewith,

between the points named in such tariffs than the rates, fares, and charges which are

specified in

the tariff filed and in effect at the time;

nor shall any carrier refund or remit in any manner or by any device any portion of the rates, fares, and charges so specified, nor extend to any shipper or person any privileges or facilities in the transportation of passengers or property, except such as are specified in such tariffs: *Provided*, That wherever the word "carrier" occurs in this Act it shall be held to mean "common carrier."

[*Section 22, old law, provides that nothing in this act shall prevent the carriage, storage, or handling of property free or at reduced rates for the United States. See p. 82.*]

That in time of war or threatened war preference and precedence shall, upon the demand of the President of the United States, be given, over all other traffic, to the transportation of troops and material of war, and carriers shall adopt every means

within their control to facilitate and expedite the military traffic.

[*Balance of section 6, new law, is an amendment to Elkins law.* *See p. 88.*]

SEC. 7. That it shall be unlawful for any common carrier subject to the provisions of this Act to enter into any combination, contract, or agreement, expressed or implied, to prevent, by change of time schedule, carriage in different cars, or by other means or devices, the carriage of freights from being continuous from the place of shipment to the place of destination; and no break of bulk, stoppage, or interruption made by such common carrier shall prevent the carriage of freights from being and being treated as one continuous carriage from the place of shipment to the place of destination, unless such break, stoppage, or interruption was made in good faith for some necessary purpose, and without any intent to avoid or unnecessarily interrupt such continuous carriage or to evade any of the provisions of this Act.

[*Unchanged.*]

SEC. 8. That in case any common carrier subject to the provisions of this Act shall do, cause to be done, or permit to be done any act, matter, or thing in this Act prohibited or declared to be unlawful, or shall omit to do any act, matter, or thing in this Act required to be done, such common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this Act, together with a reasonable counsel or attorney's fee, to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case.

[*Unchanged.*]

SEC. 9. That any person or persons claiming to be damaged by any common carrier subject to the provisions of this Act may either make complaint to the Commission as hereinafter provided for, or may bring suit in his or their own behalf for the recovery of the damages for which such common carrier may be liable under the provisions of this Act, in any district or circuit court of the

[*Unchanged.*]

United States of competent jurisdiction; but such person or persons shall not have the right to pursue both of said remedies, and must in each case elect which one of the two methods of procedure herein provided for he or they will adopt. In any such action brought for the recovery of damages the court before which the same shall be pending may compel any director, officer, receiver, trustee, or agent of the corporation or company defendant in such suit to attend, appear, and testify in such case, and may compel the production of the books and papers of such corporation or company party to any such suit; the claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying, but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

[*Amended by acts of February 11, 1893, and June 30, 1906. See pp. 98, 99.*]

SEC. 10 [*as amended March 2, 1889 (25 Stat., 855)*]. That any common carrier subject to the provisions of this Act, or, whenever such common carrier is a corporation, any director or officer thereof, or

[*Unchanged except the corporation may now be prosecuted under Elkins law. See p. 88.*]

any receiver, trustee, lessee, agent, or person, acting for or employed by such corporation, who, alone or with any other corporation, company, person, or party, shall willfully do or cause to be done, or shall willingly suffer or permit to be done, any act, matter, or thing in this Act prohibited or declared to be unlawful, or who shall aid or abet therein, or shall willfully omit or fail to do any act, matter, or thing in this Act required to be done, or shall cause or willingly suffer or permit any act, matter, or thing so directed or required by this Act to be done not to be so done, or shall aid or abet any such omission or failure, or shall be guilty of any infraction of this Act, or shall aid or abet therein, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any district court of the United States within the jurisdiction of which such offense was committed, be subject to a fine of not to exceed five thousand dollars for each offense: *Provided*, That if the offense for which any person shall be convicted as aforesaid shall be an unlawful discrimination

in rates, fares, or charges, for the transportation of passengers or property, such person shall, in addition to the fine hereinbefore provided for, be liable to imprisonment in the penitentiary for a term of not exceeding two years, or both such fine and imprisonment, in the discretion of the court.

[*Amendment as to imprisonment for discriminating, p. 91.*]

Any common carrier subject to the provisions of this Act, or, whenever such common carrier is a corporation, any officer or agent thereof, or any person acting for or employed by such corporation, who, by means of false billing, false classification, false weighing, or false report of weight, or by any other device or means, shall knowingly and willfully assist, or shall willingly suffer or permit, any person or persons to obtain transportation for property at less than the regular rates then established and in force on the line of transportation of such common carrier, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject

[*The corporation may now be prosecuted under Elkins law, p. 88.*]

to a fine of not exceeding five thousand dollars, or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court, for each offense.

[*Amendment as to imprisonment for discriminating, p. 91.*]

Any person and any officer or agent of any corporation or company who shall deliver property for transportation to any common carrier, subject to the provisions of this Act, or for whom as consignor or consignee any such carrier shall transport property, who shall knowingly and willfully, by false billing, false classification, false weighing, false representation of the contents of the package, or false report of weight, or by any other device or means, whether with or without the consent or connivance of the carrier, its agent or agents, obtain transportation for such property at less than the regular rates then established and in force on the line of transportation, shall be deemed guilty of fraud, which is hereby declared to be a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent juris-

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diction within the district in which such offense was committed, be subject for each offense to a fine of not exceeding five thousand dollars or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court.

[*Amendment as to imprisonment for discriminating, p. 91.*]

If any such person, or any officer or agent of any such corporation or company, shall, by payment of money or other thing of value, solicitation, or otherwise, induce any common carrier subject to the provisions of this Act, or any of its officers or agents, to discriminate unjustly in his, its, or their favor as against any other consignor or consignee in the transportation of property, or shall aid or abet any common carrier in any such unjust discrimination, such person, or such officer or agent of such corporation or company, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject to a fine of not exceeding five thousand dollars, or imprisonment in the penitentiary for a

[*Amendment as to imprisonment for discriminating, p. 91.*]

term of not exceeding two years, or both, in the discretion of the court, for each offense; and such person, corporation, or company shall also, together with said common carrier, be liable, jointly or severally, in an action on the case to be brought by any consignor or consignee discriminated against in any court of the United States of competent jurisdiction for all damages caused by or resulting therefrom.

SEC. 11. That a commission is hereby created and established to be known as the Inter-State Commerce Commission, which shall be composed of five Commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. The Commissioners first appointed under this Act shall continue in office for the term of two, three, four, five, and six years, respectively, from the first day of January, anno Domini eighteen hundred and eighty-seven, the term of each to be designated by the President; but their successors shall be appointed for terms of six years, except that any person chosen to fill a vacancy shall be appointed only for the

[*Unchanged except the Commission enlarged to seven members of seven-year terms, not more than four from same political party, at salary of $10,000 per year, by new section 24, p. 85.*]

unexpired time of the Commissioner whom he shall succeed. Any Commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. Not more than three of the Commissioners shall be appointed from the same political party. No person in the employ of or holding any official relation to any common carrier subject to the provisions of this Act, or owning stock or bonds thereof, or who is in any manner pecuniarily interested therein, shall enter upon the duties of or hold such office. Said Commissioners shall not engage in any other business, vocation, or employment. No vacancy in the Commission shall impair the right of the remaining Commissioners to exercise all the powers of the Commission.

SEC. 12 [*as amended March 2, 1889 (25 Stat., 855), and February 10, 1891 (26 Stat., 743)*]. That the Commission hereby created shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this Act, and shall keep itself informed as to the manner and

[*Unchanged.*]

method in which the same is conducted, and shall have the right to obtain from such common carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created; and the Commission is hereby authorized and required to execute and enforce the provisions of this Act; and, upon the request of the Commission, it shall be the duty of any district attorney of the United States to whom the Commission may apply to institute in the proper court and to prosecute under the direction of the Attorney-General of the United States all necessary proceedings for the enforcement of the provisions of this Act and for the punishment of all violations thereof, and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States; and for the purposes of this Act the Commission shall have power to require, by subpœna, the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation.

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Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpœna the Commission, or any party to a proceeding before the Commission, may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents under the provisions of this section.

And any of the circuit courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpœna issued to any common carrier subject to the provisions of this act, or other person, issue an order requiring such common carrier or other person to appear before said Commission (and produce books and papers if so ordered) and give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. The claim that any such testimony or evidence may tend to

[*Immunity laws, p. 98.*]

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criminate the person giving such evidence shall not excuse such witness from testifying; but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

The testimony of any witness may be taken, at the instance of a party, in any proceeding or investigation depending before the Commission, by deposition, at any time after a cause or proceeding is at issue on petition and answer. The Commission may also order testimony to be taken by deposition in any proceeding or investigation pending before it, at any stage of such proceeding or investigation. Such depositions may be taken before any judge of any court of the United States, or any commissioner of a circuit, or any clerk of a district or circuit court, or any chancellor, justice, or judge of a supreme or superior court, mayor or chief magistrate of a city, judge of a county court, or court of common pleas of any of the United States, or any notary public, not being of counsel or attorney to either of the parties, nor interested in the

event of the proceeding or investigation. Reasonable notice must first be given in writing by the party or his attorney proposing to take such deposition to the opposite party or his attorney of record, as either may be nearest, which notice shall state the name of the witness and the time and place of the taking of his deposition. Any person may be compelled to appear and depose, and to produce documentary evidence, in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the Commission as hereinbefore provided.

Every person deposing as herein provided shall be cautioned and sworn (or affirm, if he so request) to testify the whole truth, and shall be carefully examined. His testimony shall be reduced to writing by the magistrate taking the deposition, or under his direction, and shall, after it has been reduced to writing, be subscribed by the deponent.

If a witness whose testimony may be desired to be taken by deposition be in a foreign country, the deposi-

tion may be taken before an officer or person designated by the Commission, or agreed upon by the parties by stipulation in writing to be filed with the Commission. All depositions must be promptly filed with the Commission.

Witnesses whose depositions are taken pursuant to this Act, and the magistrate or other officer taking the same, shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

SEC. 13. That any person, firm, corporation, or association, or any mercantile, agricultural, or manufacturing society, or any body politic or municipal organization complaining of anything done or omitted to be done by any common carrier subject to the provisions of this Act in contravention of the provisions thereof, may apply to said Commission by petition, which shall briefly state the facts; whereupon a statement of the charges thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint or to answer the same in writing within a reasonable time, to be specified by the Com-

[*Unchanged.*]

mission. If such common carrier, within the time specified, shall make reparation for the injury alleged to have been done, said carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such carrier shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper.

Said Commission shall in like manner investigate any complaint forwarded by the railroad commissioner or railroad commission of any State or Territory, at the request of such commissioner or commission, and may institute any inquiry on its own motion in the same manner and to the same effect as though complaint had been made.

No complaint shall at any time be dismissed because of the absence of direct damage to the complainant.

SEC. 14 [*as amended March 2, 1889 (25 Stat., 855)*]. That whenever an investigation

SEC. 14.

That whenever an investigation shall be made by said

shall be made by said Commission, it shall be its duty to make a report in writing in respect thereto, which shall include the findings of fact upon which the conclusions of the Commission are based, together with its recommendation as to what reparation, if any, should be made by the common carrier to any party or parties who may be found to have been injured; and such findings so made shall thereafter, in all judicial proceedings, be deemed prima facie evidence as to each and every fact found.

All reports of investigations made by the Commission shall be entered of record, and a copy thereof shall be furnished to the party who may have complained, and to any common carrier that may have been complained of.

The Commission may provide for the publication of its

Commission, it shall be its duty to make a report in writing in respect thereto, which shall state the conclusions of the Commission, together with its decision, order, or requirement in the premises; and in case damages are awarded such report shall include the findings of fact on which the award is made.

All reports of investigations made by the Commission shall be entered of record, and a copy thereof shall be furnished to the party who may have complained, and to any common carrier that may have been complained of.

The Commission may provide for the publication of its

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reports and decisions in such form and manner as may be best adapted for public information and use, and such authorized publications shall be competent evidence of the reports and decisions of the Commission therein contained, in all courts of the United States, and of the several States, without any further proof or authentication thereof. The Commission may also cause to be printed for early distribution its annual reports.

SEC. 15. That if in any case in which an investigation shall be made by said Commission it shall be made to appear to the satisfaction of the Commission, either by the testimony of witnesses or other evidence, that anything has been done or omitted to be done in violation of the provisions of this Act, or of any law cognizable by said Commission, by any common carrier, or that any injury or damage has been sustained by the party or parties complaining, or by other parties aggrieved in consequence of any such violation, it shall be the duty of the Commission to forthwith cause a copy of

reports and decisions in such form and manner as may be best adapted for public information and use, and such authorized publications shall be competent evidence of the reports and decisions of the Commission therein contained in all courts of the United States and of the several States without any further proof or authentication thereof. The Commission may also cause to be printed for early distribution its annual reports.

[*Wholly superseded. See below.*]

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its report in respect thereto to be delivered to such common carrier, together with a notice to said common carrier to cease and desist from such violation, or to make reparation for the injury so found to have been done, or both, within a reasonable time, to be specified by the Commission; and if, within the time specified, it shall be made to appear to the Commission that such common carrier has ceased from such violation of law, and has made reparation for the injury found to have been done, in compliance with the report and notice of the Commission, or to the satisfaction of the party complaining, a statement to that effect shall be entered of record by the Commission, and the said common carrier shall thereupon be relieved from further liability or penalty for such particular violation of law.

SEC. 15. That the Commi
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complaint of any commo
carrier, it shall be of the opi

ion that any of the rates, or charges whatsoever, demanded, charged, or collected by any common carrier or carriers, subject to the provisions of this Act, for the transportation of persons or property as defined in the first section of this Act, or that any regulations or practices whatsoever of such carrier or carriers affecting such rates, are unjust or unreasonable, or unjustly discriminatory, or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this Act, to determine and prescribe what will be the just and reasonable rate or rates, charge or charges, to be thereafter observed in such case as the maximum to be charged; and what regulation or practice in respect to such transportation is just, fair, and reasonable to be thereafter followed; and to make an order that the carrier shall cease and desist from such violation, to the extent to which the Commission find the same to exist, and shall not thereafter publish, demand, or collect any rate or charge for such transportation in excess of the maximum rate or charge so

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prescribed, and shall conform to the regulation or practice so prescribed. All orders of the Commission, except orders for the payment of money, shall take effect within such reasonable time, not less than thirty days, and shall continue in force for such period of time, not exceeding two years, as shall be prescribed in the order of the Commission, unless the same shall be suspended or modified or set aside by the Commission or be suspended or set aside by a court of competent jurisdiction. Whenever the carrier or carriers, in obedience to such order of the Commission or otherwise, in respect to joint rates, fares, or charges, shall fail to agree among themselves upon the apportionment or division thereof, the Commission may after hearing make a supplemental order prescribing the just and reasonable proportion of such joint rate to be received by each carrier party thereto, which order shall take effect as a part of the original order.

The Commission may also, after hearing on a complaint, establish through routes and joint rates as the maximum

to be charged and prescribe the division of such rates as hereinbefore provided, and the terms and conditions under which such through routes shall be operated, when that may be necessary to give effect to any provision of this Act, and the carriers complained of have refused or neglected to voluntarily establish such through routes and joint rates, provided no reasonable or satisfactory through route exists, and this provision shall apply when one of the connecting carriers is a water line.

If the owner of property transported under this Act directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be no more than is just and reasonable, and the Commission may, after hearing on a complaint, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the service so rendered or for the use of the instrumentality so furnished, and fix the same by appropriate order, which order shall have the same

force and effect and be enforced in like manner as the orders above provided for in this section.

The foregoing enumeration of powers shall not exclude any power which the Commission would otherwise have in the making of an order under the provisions of this Act.

SEC. 16. That if, after hearing on a complaint made as provided in section thirteen of this Act, the Commission shall determine that any party complainant is entitled to an award of damages under the provisions of this Act for a violation thereof, the Commission shall make an order directing the carrier to pay to the complainant the sum to which he is entitled on or before a day named.

[SEC. 16, *latter half of section given first, transposed from p. 59.*]

If the matters involved in any such order or requirement of said Commission are founded upon a controversy requiring a trial by jury, as provided by the seventh amendment to the Constitution of the United States,

If a carrier does not comply with an order for the payment of money

and any such common carrier shall violate or refuse or neglect to obey or perform the same, after notice given by said commission as provided in the fifteenth section of this Act,

within the time limit in such order,

it shall be lawful for any company or person interested in such order or requirement

the complainant, or any person for whose benefit such order was made,

to apply in a summary way by petition to the circuit court of the United States sitting as a court of law

may file in the circuit court of the United States

in the judicial district in which the carrier complained of has its principal office, or in which the violation or disobedience of such order or requirement shall happen,

for the district in which he resides or in which is located the principal operating office of the carrier, or through which the road of the carrier runs, a petition

alleging such violation or disobedience as the case may be;

setting forth briefly the causes for which he claims damages, and the order of the Commission in the premises.

and said court shall by its order then fix a time and place for the trial of said cause, which shall not be less than twenty nor more than forty days from the time said order is made, and it shall be the duty of the marshal of the district in which said proceeding is pending to forthwith serve a copy of said petition, and of said order, upon each of the defendants, and it shall be the duty of the defendants to file their answers to said petition within ten days after the service of the same upon them as aforesaid.

Such suit shall proceed in all respects like other civil suits for damages,

At the trial the findings of fact of said Commission as set forth in its report shall be prima facie evidence of the matters therein stated, ·

except that on the trial of such suit the findings and order of the Commission shall be prima facie evidence of the facts therein stated,

and except that the petitioner shall not be liable for costs in the circuit court nor for costs at any subsequent stage of the proceedings, unless they accrue upon his appeal.

[*Proceedings like other civil suits for damages. See just above.*]

and if either party shall demand a jury or shall omit to waive a jury the court shall, by its order, direct the marshal forthwith to summon a jury to try the cause; but if all the parties shall waive a jury in writing then the court shall try the issues in said cause and render its judgment thereon. If the subject in dispute shall be of the value of two thousand dollars or more either party may appeal to the Supreme Court of the United States under the same regulations now provided by law in respect to security for such appeal; but such appeal must be taken within twenty days from the day of the rendition of the judgment of said circuit court.

If the judgment of the circuit court shall be in favor of the party complaining he or

they shall be entitled to recover a reasonable counsel or attorney's fee, to be fixed by the court, which shall be collected as part of the costs in the case.

If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit.

For the purposes of this Act, excepting its penal provisions, the circuit courts of the United States shall be deemed to be always in session.

All complaints for the recovery of damages shall be filed with the Commission within two years from the time the cause of action accrues, and not after, and a petition for the enforcement of an order for the payment of money shall be filed in the circuit court within one year from the date of the order, and not after: *Provided*, That claims accrued prior to the passage of this act may be presented within one year.

In such suits all parties in whose favor the Commission may have made an award for damages by a single order may be joined as plaintiffs,

and all of the carriers parties to such order awarding such damages may be joined as defendants, and such suit may be maintained by such joint plaintiffs and against such joint defendants in any district where any one of such joint plaintiffs could maintain such suit against any one of such joint defendants; and service of process against any one of such defendants as may not be found in the district where the suit is brought may be made in any district where such defendant carrier has its principal operating office. In case of such joint suit the recovery, if any, may be by judgment in favor of any one of such plaintiffs, against the defendant found to be liable to such plaintiff.

Every order of the Commission shall be forthwith served by mailing to any one of the principal officers or agents of the carrier at his usual place of business a copy thereof; and the registry mail receipt shall be prima facie evidence of the receipt of such order by the carrier in due course of mail.

The Commission shall be authorized to suspend or modify its orders upon such

notice and in such manner as it shall deem proper.

It shall be the duty of every common carrier, its agents and employees, to observe and comply with such orders so long as the same shall remain in effect.

Any carrier, any officer, representative, or agent of a carrier, or any receiver, trustee, lessee, or agent of either of them, who knowingly fails or neglects to obey any order made under the provisions of section fifteen of this Act, shall forfeit to the United States the sum of five thousand dollars for each offense. Every distinct violation shall be a separate offense, and in case of a continuing violation each day shall be deemed a separate offense.

The forfeiture provided for in this Act shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States, brought in the district where the carrier has its principal operating office, or in any district through which the road of the carrier runs.

It shall be the duty of the various district attorneys, under the direction of

the Attorney-General of the United States, to prosecute for the recovery of forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States. The Commission may, with the consent of the Attorney-General, employ special counsel in any proceeding under this Act, paying the expenses of such employment out of its own appropriation.

[*Latter half of section 16 precedes, on p. 52.*]

SEC. 16 [*as amended March 2, 1889 (25 Stat., 855)*]. That whenever any common carrier, as defined in and subject to the provisions of this act, shall violate, or refuse or neglect to obey or perform any lawful order or requirement of the Commission created by this act, not founded upon a controversy requiring a trial by jury, as provided by the seventh amendment to the Constitution of the United States,

If any carrier fails or neglects to obey any order of the Commission, other than for the payment of money, while the same is in effect,

it shall be lawful for the Commission or for any company or person interested in such order or requirement,

any party injured thereby, or the Commission in its own name,

to apply in a summary way, by petition, to the circuit court of the United States sitting in equity

may apply to the circuit court

in the judicial district in which the common carrier complained of has its principal office, or in which the violation or disobedience of such order or requirement shall happen,

in the district where such carrier has its principal operating office, or in which the violation or disobedience of such order shall happen, for an enforcement of such order. Such application shall be by petition,

alleging such violation or disobedience, as the case may be;

which shall state the substance of the order and the respect in which the carrier has failed of obedience,

[*Sentence in brackets transposed from below.*]
[and such notice may be served on such common carrier, his or its officers, agents, or servants in such manner as the court shall direct;]

and shall be served upon the carrier in such manner as the court may direct,

and the said court shall have power to hear and determine the matter, on such short notice to the common carrier complained of as the court shall deem reasonable;

[*Sentence from here transposed to above.*]
and said court shall proceed to hear and determine the matter speedily as a court of equity, and without the formal pleadings and proceedings applicable to ordinary suits in equity, but in such manner as to do justice in the premises;

and to this end such court shall have power, if it think fit, to direct and prosecute in such mode and by such persons as it may appoint, all such inquiries as the court may think needful to enable it to form a just judgment in the matter of such petition;

[*Sentence from here transposed to p. 68.*]

and the court shall prosecute such inquiries and make such investigations, through such means as it shall deem needful in the ascertainment of the facts at issue or which may arise upon the hearing of such petition.

and if it be made to appear to such court, on such hearing or on report of any such person or persons, that the lawful order or requirement of said Commission drawn in question has been violated or disobeyed, it shall be lawful for such court to issue

If, upon such hearing as the court may determine to be necessary, it appears that the order was regularly made and duly served, and that the carrier is in disobedience of the same, the court shall enforce obedience to such order by

a writ of injunction or other proper process, mandatory or otherwise, to restrain such

a writ of injunction, or other proper process, mandatory or otherwise, to restrain such

common carrier from further continuing such violation or disobedience of such order or requirement of said Commission, and enjoining obedience to the same;

carrier, its officers, agents, or representatives, from further disobedience of such order, or to enjoin upon it, or them, obedience to the same;

and in case of any disobedience of any such writ of injunction or other proper process, mandatory or otherwise, it shall be lawful for such court to issue writs of attachment, or any other process of said court incident or applicable to writs of injunction or other proper process, mandatory or otherwise, against such common carrier, and if a corporation, against one or more of the directors, officers, or agents of the same, or against any owner, lessee, trustee, receiver, or other person failing to obey such writ of injunction, or other proper process, mandatory or otherwise; and said court may, if it shall think fit, make an order directing such common carrier or other person so disobeying such writ of injunction or other proper process, mandatory or otherwise, to pay such sum of money, not exceeding for each carrier or person in default the sum of five hundred dollars for every day,

after a day to be named in the order, that such carrier or other person shall fail to obey such injunction or other proper process, mandatory or otherwise; and such moneys shall be payable as the court shall direct, either to the party complaining or into court, to abide the ultimate decision of the court, or into the Treasury; and payment thereof may, without prejudice to any other mode of recovering the same, be enforced by attachment or order in the nature of a writ of execution, in like manner as if the same had been recovered by a final decree in personam in such court.

and in the enforcement of such process the court shall have those powers ordinarily exercised by it in compelling obedience to its writs of injunction and mandamus.

When the subject in dispute shall be of the value of two thousand dollars or more, either party to such proceeding before said court may appeal to the Supreme Court of the United States, under the same regulations now provided by law in respect of security for such appeal; but

such appeal shall not operate to stay or supersede the order of the court or the execution of any writ or process thereon;

From any action upon such petition an appeal shall lie by either party to the Supreme Court of the United States,

and such court may, in every such matter, order the payment of such costs and counsel fees as shall be deemed reasonable. Whenever any such petition shall be filed or presented by the Commission it shall be the duty of the district attorney, under the direction of the Attorney-General of the United States, to prosecute the same; and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

and in such court the case shall have priority in hearing and determination over all other causes except criminal causes, but such appeal shall not vacate or suspend the order appealed from.

The venue of suits brought in any of the circuit courts of the United States against the Commission to enjoin, set

aside, annul, or suspend any order or requirement of the Commission shall be in the district where the carrier against whom such order or requirement may have been made has its principal operating office, and may be brought at any time after such order is promulgated. And if the order or requirement has been made against two or more carriers then in the district where any one of said carriers has its principal operating office, and if the carrier has its principal operating office in the District of Columbia then the venue shall be in the district where said carrier has its principal office; and jurisdiction to hear and determine such suits is hereby vested in such courts. The provisions of "An Act to expedite the hearing and determination of suits in equity, and so forth," approved February eleventh, nineteen hundred and three, shall be, and are hereby, made applicable to all such suits, including the hearing on an application for a preliminary injunction, and are also made applicable to any proceeding in equity to enforce any order or requirement of the Commission, or

any of the provisions of the Act to regulate commerce approved February fourth, eighteen hundred and eighty-seven, and all Acts amendatory thereof or supplemental thereto. It shall be the duty of the Attorney-General in every such case to file the certificate provided for in said expediting Act of February eleventh, nineteen hundred and three, as necessary to the application of the provisions thereof, and upon appeal as therein authorized to the Supreme Court of the United States, the case shall have in such court priority in hearing and determination over all other causes except criminal causes: *Provided,* That no injunction, interlocutory order or decree suspending or restraining the enforcement of an order of the Commission shall be granted except on hearing after not less than five days' notice to the Commission. An appeal may be taken from any interlocutory order or decree granting or continuing an injunction in any suit, but shall lie only to the Supreme Court of the United States: *Provided further,* That the appeal must be taken within thirty days from

the entry of such order or decree and it shall take precedence in the appellate court over all other causes, except causes of like character and criminal causes.

[*Sentence in brackets transposed from p. 61.*]
[and on such hearing the findings of fact in the report of said Commission shall be prima facie evidence of the matter therein stated;]

The copies of schedules and tariffs of rates, fares, and charges, and of all contracts, agreements, or arrangements between common carriers filed with the Commission as herein provided, and the statistics, tables, and figures contained in the annual reports of carriers made to the Commission, as required by the provisions of this Act, shall be preserved as public records in the custody of the secretary of the Commission, and shall be received as prima facie evidence of what they purport to be for the purpose of investigations by the Commission and in all judicial proceedings; and copies of or extracts from any of said schedules, tariffs, contracts, agreements, arrangements, or reports made

public records as aforesaid, certified by the secretary under its seal, shall be received in evidence with like effect as the originals.

SEC. 16a [*new section*]. That after a decision, order, or requirement has been made by the Commission in any proceeding any party thereto may at any time make application for rehearing of the same, or any matter determined therein, and it shall be lawful for the Commission in its discretion to grant such a rehearing if sufficient reason therefor be made to appear. Applications for rehearing shall be governed by such general rules as the Commission may establish. No such application shall excuse any carrier from complying with or obeying any decision, order, or requirement of the Commission, or operate in any manner to stay or postpone the enforcement thereof, without the special order of the Commission. In case a rehearing is granted the proceedings thereupon shall conform as nearly as may be to the proceedings in an original hearing, except as the Commission may otherwise direct; and if, in its judgment, after

such rehearing and the consideration of all facts, including those arising since the former hearing, it shall appear that the original decision, order, or requirement is in any respect unjust or unwarranted, the Commission may reverse, change, or modify the same accordingly. Any decision, order, or requirement made after such rehearing, reversing, changing, or modifying the original determination shall be subject to the same provisions as an original order.

SEC. 17 [*as amended March 2, 1889 (25 Stat., 855)*]. That the Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice. A majority of the Commission shall constitute a quorum for the transaction of business, but no Commissioner shall participate in any hearing or proceeding in which he has any pecuniary interest. Said Commission may, from time to time, make or amend such general rules or orders as may be requisite for the order and regulation of proceedings before it, including forms of notices and the service thereof,

[*Unchanged.*]

which shall conform, as nearly as may be, to those in use in the courts of the United States. Any party may appear before said Commission and be heard, in person or by attorney. Every vote and official act of the Commission shall be entered of record, and its proceedings shall be public upon the request of either party interested. Said Commission shall have an official seal, which shall be judicially noticed. Either of the members of the Commission may administer oaths and affirmations and sign subpœnas.

SEC. 18 [*as amended March 2, 1889 (25 Stat., 855)*]. That each Commissioner shall receive an annual salary of seven thousand five hundred dollars, payable in the same manner as the judges of the courts of the United States. The Commission shall appoint a secretary, who shall receive an annual salary of three thousand five hundred dollars, payable in like manner. The Commission shall have authority to employ and fix the compensation of such other employees as it may find necessary to the proper performance of its duties. Until otherwise provided by law, the Commission may hire

[*Unchanged except salary of Commissioner made $10,000. See p. 85.*]

suitable offices for its use, and shall have authority to procure all necessary office supplies. Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

All of the expenses of the Commission, including all necessary expenses for transportation incurred by the Commissioners, or by their employees under their orders, in making any investigation, or upon official business in any other places than in the city of Washington, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman of the Commission.

SEC. 19. That the principal office of the Commission shall be in the city of Washington, where its general sessions shall be held; but whenever the convenience of the public or the parties may be promoted or delay or expense prevented thereby, the Commission may hold special sessions in any part of the United States. It may, by one or more of the Commissioners, prosecute any inquiry necessary to its duties, in any part of the United States, into

[*Unchanged.*]

any matter or question of fact pertaining to the business of any common carrier subject to the provisions of this Act.

SEC. 20. That the Commission is hereby authorized to require annual reports from all common carriers subject to the provisions of this Act,

to fix the time and

prescribe the manner in which such reports shall be made, and to require from such carriers specific answers to all questions upon which the Commission may need information. Such annual reports shall show in detail the amount of capital stock issued, the amounts paid therefor, and the manner of payment for the same; the dividends paid, the surplus fund, if any, and the number of stockholders; the funded and floating debts and the interest paid thereon; the cost and value of the carrier's property, franchises, and equipments; the number of employees and the salaries paid each class;

SEC. 20. That the Commission is hereby authorized to require annual reports from all common carriers subject to the provisions of this Act,

and from the owners of all railroads engaged in interstate commerce as defined in this Act,

to prescribe the manner in which such reports shall be made, and to require from such carriers specific answers to all questions upon which the Commission may need information. Such annual reports shall show in detail the amount of capital stock issued, the amounts paid therefor, and the manner of payment for the same; the dividends paid, the surplus fund, if any, and the number of stockholders; the funded and floating debts and the interest paid thereon; the cost and value of the carrier's property, franchises, and equipments; the number of employees and the salaries paid each class;

the accidents to passengers, employees, and other persons, and the causes thereof;

the amounts expended for improvements each year, how expended, and the character of such improvements; the earnings and receipts from each branch of business and from all sources; the operating and other expenses; the balances of profit and loss; and a complete exhibit of the financial operations of the carrier each year, including an annual balance-sheet. Such reports shall also contain such information in relation to rates or regulations concerning fares or freights, or agreements, arrangements, or contracts

the amounts expended for improvements each year, how expended, and the character of such improvements; the earnings and receipts from each branch of business and from all sources; the operating and other expenses; the balances of profit and loss; and a complete exhibit of the financial operations of the carrier each year, including an annual balance-sheet. Such reports shall also contain such information in relation to rates or regulations concerning fares or freights, or agreements, arrangements, or contracts

with other common carriers,

affecting the same

as the Commission may require; and the

as the Commission may require; and the

said

Commission may,

Commission may,

within

in

its discretion, for the purpose of enabling it the better to carry out the purposes of this Act, prescribe

its discretion, for the purpose of enabling it the better to carry out the purposes of this Act prescribe

(if in the opinion of the Commission it is practicable to prescribe such uniformity and methods of keeping accounts)

a period of time within which all common carriers subject to the provisions of this Act shall have, as near as may be, a uniform system of accounts and the manner in which such accounts shall be kept.

a period of time within which all common carriers subject to the provisions of this Act shall have, as near as may be, a uniform system of accounts, and the manner in which such accounts shall be kept.

Said detailed reports shall contain all the required statistics for the period of twelve months ending on the thirtieth day of June in each year, and shall be made out under oath and filed with the Commission, at its office in Washington, on or before the thirtieth day of September then next following, unless additional time be granted in any case by the Commission; and if any carrier, person, or corporation subject to the provisions of this Act shall fail to make and file said annual reports within the time above specified, or within the time extended by the Commission for making and filing the same, or shall fail to make specific answer to any question authorized by the provisions of this section within thirty days from the time it is

lawfully required so to do, such parties shall forfeit to the United States the sum of one hundred dollars for each and every day it shall continue to be in default with respect thereto. The Commission shall also have authority to require said carriers to file monthly reports of earnings and expenses or special reports within a specified period, and if any such carrier shall fail to file such reports within the time fixed by the Commission it shall be subject to the forfeitures last above provided.

Said forfeitures shall be recovered in the manner provided for the recovery of forfeitures under the provisions of this Act.

The oath required by this section may be taken before any person authorized to administer an oath by the laws of the State in which the same is taken.

The Commission may, in its discretion, prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers subject to the provisions of this Act, including the accounts, records, and memoranda of the movement of traffic as well as the

receipts and expenditures of moneys. The Commission shall at all times have access to all accounts, records, and memoranda kept by carriers subject to this Act, and it shall be unlawful for such carriers to keep any other accounts, records, or memoranda than those prescribed or approved by the Commission, and it may employ special agents or examiners, who shall have authority under the order of the Commission to inspect and examine any and all accounts, records, and memoranda kept by such carriers. This provision shall apply to receivers of carriers and operating trustees.

In case of failure or refusal on the part of any such carrier, receiver, or trustee to keep such accounts, records, and memoranda on the books and in the manner prescribed by the Commission, or to submit such accounts, records, and memoranda as are kept to the inspection of the Commission or any of its authorized agents or examiners, such carrier, receiver, or trustee shall forfeit to the United States the sum of five hundred dollars for each such offense and for each and every

day of the continuance of such offense, such forfeitures to be recoverable in the same manner as other forfeitures provided for in this Act.

Any person who shall willfully make any false entry in the accounts of any book of accounts or in any record or memoranda kept by a carrier, or who shall willfully destroy, mutilate, alter, or by any other means or device falsify the record of any such account, record, or memoranda, or who shall willfully neglect or fail to make full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the carrier's business, or shall keep any other accounts, records, or memoranda than those prescribed or approved by the Commission, shall be deemed guilty of a misdemeanor, and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than one thousand dollars nor more than five thousand dollars or imprisonment for a term not less than one year nor more than three years, or both such fine and imprisonment: *Provided,*

That the Commission may in its discretion issue orders specifying such operating, accounting, or financial papers, records, books, blanks, tickets, stubs, or documents of carriers which may, after a reasonable time, be destroyed, and prescribing the length of time such books, papers, or documents shall be preserved.

Any examiner who divulges any fact or information which may come to his knowledge during the course of such examination, except in so far as he may be directed by the Commission or by a court or judge thereof, shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not more than five thousand dollars or imprisonment for a term not exceeding two years, or both.

That the circuit and district courts of the United States shall have jurisdiction, upon the application of the Attorney-General of the United States at the request of the Commission, alleging a failure to comply with or a violation of any of the provisions of said Act to regulate commerce or of any Act supplementary thereto or amend-

atory thereof by any common carrier, to issue a writ or writs of mandamus commanding such common carrier to comply with the provisions of said Acts, or any of them.

And to carry out and give effect to the provisions of said Acts, or any of them, the Commission is hereby authorized to employ special agents or examiners who shall have power to administer oaths, examine witnesses, and receive evidence.

That any common carrier, railroad, or transportation company receiving property for transportation from a point in one State to a point in another State shall issue a receipt or bill of lading therefor and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass, and no contract, receipt, rule, or regulation shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed: *Provided*, That nothing in this

section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under existing law.

That the common carrier, railroad, or transportation company issuing such receipt or bill of lading shall be entitled to recover from the common carrier, railroad, or transportation company on whose line the loss, damage, or injury shall have been sustained the amount of such loss, damage, or injury as it may be required to pay to the owners of such property, as may be evidenced by any receipt, judgment, or transcript thereof.

SEC. 21 [*as amended March 2, 1889 (25 Stat., 855)*]. That the Commission shall, on or before the first day of December in each year, make a report, which shall be transmitted to Congress, and copies of which shall be distributed as are the other reports transmitted to Congress. This report shall contain such information and data collected by the Commission as may be considered of value in the determination of questions connected with the regulation of commerce, together

[*Unchanged.*]

with such recommendations as to additional legislation relating thereto as the Commission may deem necessary; and the names and compensation of the persons employed by said Commission.

SEC. 22 [*as amended March 2, 1889 (25 Stat., 855), and February 8, 1895 (28 Stat., 643)*]. That nothing in this Act shall prevent the carriage, storage, or handling of property free or at reduced rates for the United States, State, or municipal governments, or for charitable purposes, or to or from fairs and expositions for exhibition thereat, * * *

[*Portion of section relating to free transportation of persons given on p. 9.*]

and nothing in this Act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this Act are in addition to such remedies: *Provided*, That no pending litigation shall in any way be affected by this Act: *Provided further*, That nothing in this Act shall prevent the issuance of joint interchangeable five-thousand-mile tickets, with special privileges as to the amount of free baggage that may be carried

[*Opposite section not specifically amended by law of June 29, 1906, which contains an antipass provision. See p. 9.*]

under mileage tickets of one thousand or more miles. But before any common carrier, subject to the provisions of this Act, shall issue any such joint interchangeable mileage tickets with special privileges, as aforesaid, it shall file with the Interstate Commerce Commission copies of the joint tariffs of rates, fares, or charges on which such joint interchangeable mileage tickets are to be based, together with specifications of the amount of free baggage permitted to be carried under such tickets, in the same manner as common carriers are required to do with regard to other joint rates by section six of this Act; and all the provisions of said section six relating to joint rates, fares, and charges shall be observed by said common carriers and enforced by the Interstate Commerce Commission as fully with regard to such joint interchangeable mileage tickets as with regard to other joint rates, fares, and charges referred to in said section six. It shall be unlawful for any common carrier that has issued or authorized to be issued any such joint interchangeable mileage tickets to demand,

collect, or receive from any person or persons a greater or less compensation for transportation of persons or baggage under such joint interchangeable mileage tickets than that required by the rate, fare, or charge specified in the copies of the joint tariff of rates, fares, or charges filed with the Commission in force at the time. The provisions of section ten of this Act shall apply to any violation of the requirements of this proviso.

SEC. 23. [*New section added March 2, 1889 (25 Stat., 855).*] That the circuit and district courts of the United States shall have jurisdiction upon the relation of any person or persons, firm, or corporation, alleging such violation by a common carrier, of any of the provisions of the Act to which this is a supplement and all Acts amendatory thereof, as prevents the relator from having interstate traffic moved by said common carrier at the same rates as are charged, or upon terms or conditions as favorable as those given by said common carrier for like traffic under similar conditions to any other shipper, to issue a writ or writs of mandamus against said common

[*Unchanged.*]

carrier, commanding such common carrier to move and transport the traffic, or to furnish cars or other facilities for transportation for the party applying for the writ; *Provided*, That if any question of fact as to the proper compensation to the common carrier for the service to be enforced by the writ is raised by the pleadings, the writ of peremptory mandamus may issue, notwithstanding such question of fact is undetermined, upon such terms as to security, payment of money into the court, or otherwise, as the court may think proper, pending the determination of the question of fact: *Provided*, That the remedy hereby given by writ of mandamus shall be cumulative, and shall not be held to exclude or interfere with other remedies provided by this Act or the Act to which it is a supplement.

[*Section 11 of old law relating to Commission, p. 38.*]

SEC. 24. That the Interstate Commerce Commission is hereby enlarged so as to consist of seven members with terms of seven years, and each shall receive ten thousand dollars compensation annually. The qualifications of the Commissioners and the manner of the payment of

their salaries shall be as already provided by law. Such enlargement of the Commission shall be accomplished through appointment by the President, by and with the advice and consent of the Senate, of two additional Interstate Commerce Commissioners, one for a term expiring December thirty-first, nineteen hundred and eleven, one for a term expiring December thirty-first, nineteen hundred and twelve. The terms of the present Commissioners, or of any successor appointed to fill a vacancy caused by the death or resignation of any of the present Commissioners, shall expire as heretofore provided by law. Their successors and the successors of the additional Commissioners herein provided for shall be appointed for the full term of seven years, except that any person appointed to fill a vacancy shall be appointed only for the unexpired term of the Commissioner whom he shall succeed. Not more than four Commissioners shall be appointed from the same political party.

(SEC. 9, *new*) That all existing laws relating to the at-

tendance of witnesses and the production of evidence and the compelling of testimony under the Act to regulate commerce and all Acts amendatory thereof shall apply to any and all proceedings and hearings under this Act.

(SEC. 10, *new.*) That all laws and parts of laws in conflict with the provisions of this Act are hereby repealed, but the amendments herein provided for shall not affect causes now pending in courts of the United States, but such causes shall be prosecuted to a conclusion in the manner heretofore provided by law.

(SEC. 11, *new.*) That this Act shall take effect and be in force from and after its passage.

JOINT RESOLUTION JUNE 30, 1906.

The Act entitled "An Act to amend an Act entitled 'An Act to regulate commerce' approved February fourth, eighteen hundred and eighty-seven, and all its Acts amendatory thereof, and to enlarge the powers of the Interstate Commerce Commission" shall take effect and be in force sixty days after its approval by the President of the United States.

THE ELKINS LAW.

[February 19, 1903 (32 Stat., 847).]

That anything done or omitted to be done by a corporation common carrier, subject to the Act to regulate commerce and the Acts amendatory thereof which, if done or omitted to be done by any director or officer thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by such corporation, would constitute a misdemeanor under said Acts or under this Act shall also be held to be a misdemeanor committed by such corporation, and upon conviction thereof it shall be subject to like penalties as are prescribed in said Acts or by this Act with reference to such persons except as such penalties are herein changed. The willful failure upon the part of any carrier subject to said Acts to file and publish the tariffs or rates and charges as required by said Acts or strictly to observe such tariffs until changed according to law, shall be a misdemeanor, and upon conviction thereof the corporation offending shall be subject to a fine of not less than one thousand

SEC. 6, NEW LAW, SPECIFICALLY AMENDING ELKINS LAW.

[Act of June 29, 1906 (34 Stat., 584).]

That anything done or omitted to be done by a corporation common carrier, subject to the Act to regulate commerce and the Acts amendatory thereof, which, if done or omitted to be done by any director or officer thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by such corporation, would constitute a misdemeanor under said Acts or under this Act, shall also be held to be a misdemeanor committed by such corporation, and upon conviction thereof it shall be subject to like penalties as are prescribed in said Acts or by this Act with reference to such persons, except as such penalties are herein changed. The willful failure upon the part of any carrier subject to said Acts to file and publish the tariffs or rates and charges as required by said Acts or strictly to observe such tariffs until changed according to law, shall be a misdemeanor, and upon conviction thereof the corporation offending shall be subject to a fine of not less than one thousand

dollars nor more than twenty thousand dollars for each offense; and it shall be unlawful for any person, persons, or corporation to offer, grant, or give or to solicit, accept, or receive any rebate, concession, or discrimination in respect of the transportation of any property in interstate or foreign commerce by any common carrier subject to said Act to regulate commerce and the Acts amendatory

thereto,

whereby any such property shall by any device whatever be transported at a less rate than that named in the tariffs published and filed by such carrier, as is required by said Act to regulate commerce and the Acts amendatory

thereto,

or whereby

any other advantage is given or discrimination is practiced.

Every person or corporation

who shall

dollars nor more than twenty thousand dollars for each offense; and it shall be unlawful for any person, persons, or corporation to offer, grant, or give, or to solicit, accept, or receive any rebate, concession, or discrimination in respect of the transportation of any property in interstate or foreign commerce by any common carrier subject to said Act to regulate commerce and the Acts amendatory

thereof,

whereby any such property shall by any device whatever be transported at a less rate than that named in the tariffs published and filed by such carrier, as is required by said Act to regulate commerce and the Acts amendatory

thereof,

or whereby

any other advantage is given or discrimination is practiced.

Every person or corporation,

whether carrier or shipper,

who shall,

knowingly,

offer, grant, or give or solicit, accept or receive any such rebates, concession, or discrimination shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than one thousand dollars nor more than twenty thousand dollars.

In all convictions occurring after the passage of this Act for offenses under said Acts to regulate commerce, whether committed before or after the passage of this Act, or for offenses under this section, no penalty shall be imposed on the convicted party other than the fine prescribed by law, imprisonment wherever now prescribed as part of the penalty being hereby abolished.

offer, grant, or give, or solicit, accept, or receive any such rebates, concession, or discrimination shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than one thousand dollars nor more than twenty thousand dollars:

Provided, That any person, or any officer or director of any corporation subject to the provisions of this Act, or the Act to regulate commerce and the Acts amendatory thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by any such corporation, who shall be convicted as aforesaid, shall, in addition to the fine herein provided for, be liable

Every violation of this section shall be prosecuted in any court of the United States having jurisdiction of crimes within the district in which such violation was committed or through which the transportation may have been conducted; and whenever the offense is begun in one jurisdiction and completed in another it may be dealt with, inquired of, tried, determined, and punished in either jurisdiction in the same manner as if the offense had been actually and wholly committed therein.

In construing and enforcing the provisions of this section the act, omission, or failure of any officer, agent, or other person acting for or employed by any common carrier

acting within the scope of his employment shall in every case be also deemed to be the act, omission, or failure of such carrier

as well as that of the person. Whenever any carrier files

to imprisonment in the penitentiary for a term of not exceeding two years, or both such fine and imprisonment, in the discretion of the court. Every violation of this section shall be prosecuted in any court of the United States having jurisdiction of crimes within the district in which such violation was committed, or through which the transportation may have been conducted; and whenever the offense is begun in one jurisdiction and completed in another it may be dealt with, inquired of, tried, determined, and punished in either jurisdiction in the same manner as if the offense had been actually and wholly committed therein.

In construing and enforcing the provisions of this section, the act, omission, or failure of any officer, agent, or other person acting for or employed by any common carrier,

or shipper,

acting within the scope of his employment, shall in every case be also deemed to be the act, omission, or failure of such carrier

or shipper

as well as that of the person. Whenever any carrier files

with the Interstate Commerce Commission or publishes a particular rate under the provisions of the Act to regulate commerce or Acts amendatory thereto,

with the Interstate Commerce Commission or publishes a particular rate under the provisions of the Act to regulate commerce or Acts amendatory thereof,

or participates in any rates so filed or published, that rate as against such carrier, its officers, or agents in any prosecution begun under this Act shall be conclusively deemed to be the legal rate, and any departure from such rate, or any offer to depart therefrom, shall be deemed to be an offense under this section of this Act.

or participates in any rates so filed or published, that rate as against such carrier, its officers, or agents, in any prosecution begun under this Act shall be conclusively deemed to be the legal rate, and any departure from such rate, or any offer to depart therefrom, shall be deemed to be an offense under this section of this Act.

Any person, corporation, or company who shall deliver property for interstate transportation to any common carrier, subject to the provisions of this Act, or for whom as consignor or consignee, any such carrier shall transport property from one State, Territory, or the District of Columbia to any other State, Territory, or the District of Columbia, or foreign country, who shall knowingly by employee, agent, officer, or otherwise, directly or indirectly, by or through any means or device whatsoever, receive or

accept from such common carrier any sum of money or any other valuable consideration as a rebate or offset against the regular charges for transportation of such property, as fixed by the schedules of rates provided for in this Act, shall in addition to any penalty provided by this Act forfeit to the United States a sum of money three times the amount of money so received or accepted and three times the value of any other consideration so received or accepted, to be ascertained by the trial court; and the Attorney General of the United States is authorized and directed, whenever he has reasonable grounds to believe that any such person, corporation, or company has knowingly received or accepted from any such common carrier any sum of money or other valuable consideration as a rebate or offset as aforesaid, to institute in any court of the United States of competent jurisdiction, a civil action to collect the said sum or sums so forfeited as aforesaid; and in the trial of said action all such rebates or other considerations so received or accepted for a period of six years prior to the

commencement of the action, may be included therein, and the amount recovered shall be three times the total amount of money, or three times the total value of such consideration, so received or accepted, or both, as the case may be.

SEC. 2. That in any proceeding for the enforcement of the provisions of the statutes relating to interstate commerce, whether such proceedings be instituted before the Interstate Commerce Commission or be begun originally in any circuit court of the United States, it shall be lawful to include as parties, in addition to the carrier, all persons interested in or affected by the rate, regulation, or practice under consideration, and inquiries, investigations, orders, and decrees may be made with reference to and against such additional parties in the same manner, to the same extent, and subject to the same provisions as are or shall be authorized by law with respect to carriers.

SEC. 3. That whenever the Interstate Commerce Commission shall have reasonable ground for belief that any common carrier is engaged in the carriage of passengers or

freight traffic between given points at less than the published rates on file, or is committing any discriminations forbidden by law, a petition may be presented alleging such facts to the circuit court of the United States sitting in equity having jurisdiction; and when the act complained of is alleged to have been committed or as being committed in part in more than one judicial district or State, it may be dealt with, inquired of, tried, and determined in either such judicial district or State, whereupon it shall be the duty of the court summarily to inquire into the circumstances, upon such notice and in such manner as the court shall direct and without the formal pleadings and proceedings applicable to ordinary suits in equity, and to make such other persons or corporations parties thereto as the court may deem necessary, and upon being satisfied of the truth of the allegations of said petition said court shall enforce an observance of the published tariffs or direct and require a discontinuance of such discrimination by proper orders, writs, and process, which said orders, writs, and

process may be enforceable as well against the parties interested in the traffic as against the carrier, subject to the right of appeal as now provided by law. It shall be the duty of the several district attorneys of the United States, whenever the Attorney-General shall direct, either of his own motion or upon the request of the Interstate Commerce Commission, to institute and prosecute such proceedings, and the proceedings provided for by this Act shall not preclude the bringing of suit for the recovery of damages by any party injured, or any other action provided by said Act approved February fourth, eighteen hundred and eighty-seven, entitled an Act to regulate commerce and the Acts amendatory thereof. And in proceedings under this Act and the Acts to regulate commerce the said courts shall have the power to compel the attendance of witnesses, both upon the part of the carrier and the shipper, who shall be required to answer on all subjects relating directly or indirectly to the matter in controversy, and to compel the production of all books and papers, both of the carrier and the shipper, which relate di-

rectly or indirectly to such transaction; the claim that such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such person from testifying or such corporation producing its books and papers, but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify or produce evidence documentary or otherwise in such proceeding: *Provided*, That the provisions of an Act entitled "An Act to expedite the hearing and determination of suits in equity pending or hereafter brought under the Act of July second, eighteen hundred and ninety, entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies,' 'An Act to regulate commerce,' approved February fourth, eighteen hundred and eighty-seven, or any other Acts having a like purpose that may be hereafter enacted, approved February eleventh, nineteen hundred and three," shall apply to any case prosecuted under the direction of the Attorney-General in the

[*Immunity laws on pp. 98, 99.*]

name of the Interstate Commerce Commission.

SEC. 4. That all Acts and parts of Acts in conflict with the provisions of this Act are hereby repealed, but such repeal shall not affect causes now pending nor rights which have already accrued, but such causes shall be prosecuted to a conclusion and such rights enforced in a manner heretofore provided by law and as modified by the provisions of this Act.

SEC. 5. That this Act shall take effect from its passage.

AN ACT IN RELATION TO TESTIMONY BEFORE THE INTERSTATE COMMERCE COMMISSION.

[27 STAT., 443.]

That no person shall be excused from attending and testifying or from producing books, papers, tariffs, contracts, agreements and documents before the Interstate Commerce Commission, or in obedience to the subpœna of the Commission, whether such subpœna be signed or issued by one or more Commissioners, or in any cause or proceeding, criminal or otherwise, based upon or growing out of any alleged violation of the Act of Congress, entitled "An Act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, or of any amendment thereof on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him, may tend to criminate him or subject him to a penalty or forfeiture. But no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing, concerning which he may testify,

or produce evidence, documentary or otherwise, before said Commission, or in obedience to its subpœna, or the subpœna of either of them, or in any such case or proceeding: *Provided*, That no person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

Any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce books, papers, tariffs, contracts, agreements and documents, if in his power to do so, in obedience to the subpœna or lawful requirement of the Commission shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by fine not less than one hundred dollars nor more than five thousand dollars, or by imprisonment for not more than one year or by both such fine and imprisonment.

Approved, February 11, 1893.

AN ACT DEFINING IMMUNITY.

[34 STAT., 798.]

That under the immunity provisions in the Act entitled "An Act in relation to testimony before the Interstate Commerce Commission," and so forth, approved February eleventh, eighteen hundred and ninety-three, in section six of the Act entitled "An Act to establish the Department of Commerce and Labor," approved February fourteenth, nineteen hundred and three, and in the Act entitled "An Act to further regulate commerce with foreign nations and among the States," approved February nineteenth, nineteen hundred and three, and in the Act entitled "An Act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred and four, and for other purposes," approved February twenty-fifth, nineteen hundred and three, immunity shall extend only to a natural person who, in obedience to a subpœna, gives testimony under oath or produces evidence, documentary or otherwise, under oath.

Approved, June 30, 1906.

AN ACT TO EXPEDITE THE HEARING AND DETERMINATION OF SUITS.

[32 Stat., 823.]

That in any suit in equity pending or hereafter brought in any circuit court of the United States under the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety, "An Act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, or any other Acts having a like purpose that hereafter may be enacted, wherein the United States is complainant, the Attorney-General may file with the clerk of such court a certificate that, in his opinion, the case is of general public importance, a copy of which shall be immediately furnished by such clerk to each of the circuit judges of the circuit in which the case is pending. Thereupon such case shall be given precedence over others and in every way expedited, and be assigned for hearing at the earliest practicable day, before not less than three of the circuit judges of said circuit, if there be three or more; and if there be not more than two circuit judges, then before them and such district judge as they may select. In the event the judges sitting in such case shall be divided in opinion, the case shall be certified to the Supreme Court for review in like manner as if taken there by appeal as hereinafter provided.

SEC. 2. That in every suit in equity pending or hereafter brought in any circuit court of the United States under any of said Acts, wherein the United States is complainant, including cases submitted but not yet decided, an appeal from the final decree of the circuit court will lie only to the Supreme Court and must be taken within sixty days from the entry thereof: *Provided*, That in any case where an appeal may have been taken from the final decree of a circuit court to the circuit court of appeals before this Act takes effect, the case shall proceed to a final decree therein, and an appeal may be taken from such decree to the Supreme Court in the manner now provided by law.

Approved, February 11, 1903.

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